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TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1937

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No. 773

ÆTNA INSURANCE COMPANY, PETITIONER,

vs.

UNITED FRUIT COMPANY

No. 774

UNION MARINE & GENERAL INSURANCE COMPANY, LTD., FORMERLY UNION MARINE INSURANCE COMPANY, LTD., PETITIONER,

vs.

UNITED FRUIT COMPANY

No. 775

BOSTON INSURANCE COMPANY, PETITIONER,

vs.

UNITED FRUIT COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 8, 1938.

CERTIORARI GRANTED MARCH 14, 1938.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 773

ÆTNA INSURANCE COMPANY, PETITIONER,

vs.

UNITED FRUIT COMPANY.

No. 774

UNION MARINE & GENERAL INSURANCE COMPANY, LTD., FORMERLY UNION MARINE INSURANCE COMPANY, LTD., PETITIONER,

vs.

UNITED FRUIT COMPANY

No. 775

BOSTON INSURANCE COMPANY, PETITIONER,

vs.

UNITED FRUIT COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

L 57-271

ÆTNA INSURANCE COMPANY, Plaintiff-Appellant and Appellee,

against

UNITED FRUIT COMPANY, Defendant-Appellee and Appellant

L 57-272

UNION MARINE & GENERAL INSURANCE COMPANY, LTD., Formerly Union Marine Insurance Company, Ltd., Plaintiff-Appellant and Appellee,

against

UNITED FRUIT COMPANY, Defendant-Appellee and Appellant

L 57-273

BOSTON INSURANCE COMPANY, Plaintiff-Appellant and Appellee,

against

UNITED FRUIT COMPANY, Defendant-Appellee and Appellant

(Cross Appeals)

STATEMENT ON APPEAL

The above three actions were commenced by the service of summonses and verified complaints upon the defendant in April, 1934.

[fol. 2] Issues were joined by the service of verified answers on September 10, 1934.

The actions came on and were consolidated for trial before Hon. Robert P. Patterson, District Judge and a jury of one, on October 30, 1936. At the close of the trial both sides moved for directed verdicts. On December 12, 1936, the court rendered its decision directing a verdict in favor of the plaintiffs Ætna Insurance Company for $2,132.76,

Union Marine & General Insurance Co., Ltd., formerly Union Marine Insurance Co., Ltd. for $710.92, and Boston Insurance Company for $1,777.29, all amounts to bear interest from November 28, 1932. Judgments were entered on March 10, 1937, in favor of Ætna Insurance Company for $2,782.51, Union Marine & General Insurance Co., Ltd., formerly Union Marine Insurance Co., Ltd. for $925.68, and Boston Insurance Company for $2,265.96. The appeals were allowed by order of Hon. Alfred C. Coxe on April 3, 1937.

The plaintiffs appear by Bigham, Englar, Jones & Houston, their attorneys, whose offices are maintained at 99 John Street, New York City, N. Y. and the defendant appears by Kirlin, Campbell, Hickox, Keating & McGrann having their offices at 120 Broadway, New York City, N. Y.

There has been no change of parties or attorneys.

[fol. 3] In United States District Court, Southern District of New York

Docket Entries

L 57-271

Ætna Ins. Co.

v.

United Fruit Co.

April 9, 1934. Filed præcipe and issued summons.

April 18, 1934. Filed complaint and summons.

April 18, 1934. Filed notice of appearance.

September 11, 1934. Filed answer of defendant.

March 29, 1935. Filed notice of change of address Kirlin, Campbell, Hickox, Keating & McGrann.

October 30, 1936. Before Patterson, J.—Tried with L 57-272 and L 57-273. Trial begun and concluded. Decision reserved.

December 12, 1936. Filed stipulation of facts.

December 12, 1936. Filed one volume of testimony. (See L 57-272 and L 57-273.)

December 12, 1936. Filed opinion #10217. Directed verdict for plaintiff—Patterson, J.

March 4, 1937. Filed stipulation and order amending stenographer's minutes of trial nunc pro tunc as indicated. Patterson, J. (See L 57-272 and L 57-273.)

March 5, 1937. Filed bill of costs taxed at $102.35.

March 10, 1937. Filed judgment 36859 in favor of plaintiff for $2,782.51.

Plaintiff's Appeal

April 8, 1937. Filed petition for appeal and order allowing appeal. Coxe, J.

April 8, 1937. Filed notice of appeal.

April 8, 1937. Filed assignment of errors.

April 8, 1937. Filed stipulation waiving supersedeas bond.

April 9, 1937. Filed citation—Ret. 5/1/37.

[fol. 4] Defendant's Appeal

April 22, 1937. Filed stipulation waiving supersedeas bond.

April 23, 1937. Filed petition and order allowing appeal. Patterson, J.

April 23, 1937. Filed notice of appeal.

April 23, 1937. Filed assignment of errors.

L 57-272

UNION MARINE, ETC.,

v.

UNITED FRUIT CO.

April 9, 1934. Filed præcipe and issued summons.

April 18, 1934. Filed complaint and summons.

April 18, 1934. Filed notice of appearance.

September 11, 1934. Filed answer of defendant.

March 29, 1935. Filed notice of change of address Kirlin, Campbell, Hickox, Keating & McGrann.

October 30, 1936. Before Patterson, J. Tried with L 57-271 and L 57-273. Trial begun and concluded. Decision reserved.

December 12, 1936. Filed stipulation of facts.

December 12, 1936. Filed supplemental stipulation of facts.

December 12, 1936. Filed one volume of testimony (filed under L 57-271).

December 12, 1936. Filed opinion #10217. Directed verdict for plaintiff. Patterson, J.

March 4; 1937. Filed order amending stenographer's minutes (filed under L 57-271).

March 5, 1937. Filed bill of costs taxed at $32.30.

March 10, 1937. Filed judgment 36858 in favor of plaintiff for $925.68.

[fol. 5] Plaintiff's Appeal

April 8, 1937. Filed petition and order allowing appeal. Coxe, J.

April 8, 1937. Filed notice of appeal.

April 8, 1937. Filed assignment of errors.

April 8, 1937. Filed stipulation waiving supersedeas bond.

April 9, 1937. Filed citation—Ret. 5/1/37.

Defendant's Appeal

April 22, 1937. Filed stipulation waiving supersedeas bond.

April 22, 1937. Filed petition and order allowing appeal. Paterson, J.

April 22, 1937. Filed notice of Appeal.

April 22, 1937. Filed assignment of errors.

L 57-273

Boston Ins. Co.

v.

United Fruit Co.

April 9, 1934. Filed præcipe and issued summons.

April 18, 1934. Filed complaint and summons.

April 18, 1934. Filed notice of appearance.

September 11, 1934. Filed answer of defendant.

March 29, 1935. Filed notice of change of address Kirlin, Campbell, Hickox, Keating & McGrann.

October 30, 1936. Before Paterson, J.—Tried with L 57-271 and L 57-272. Trial begun and concluded. Decision reserved.

[fol. 6] December 12, 1936. Filed stipulation of facts.

December 12, 1936. Filed supplemental stipulation of facts.

December 12, 1936. Filed one volume of testimony (filed under L 57-271).

December 12, 1936. Filed opinion #10217. Directed verdict for plaintiff. Patterson, J.

March 4, 1937. Filed order amending stenographer's minutes (filed under L 57-271).

March 5, 1937. Filed bill of costs taxed at $32.50.

March 10, 1937. Filed judgment #36859 in favor of plaintiff for $2,265.96.

Plaintiff's Appeal

April 8, 1937. Filed petition and order allowing appeal. Coxe, J.

April 8, 1937. Filed notice of appeal.

April 8, 1937. Filed assignment of errors.

April 8, 1937. Filed stipulation waiving supersedeas bond.

April 9, 1937. Filed citation—Ret. 5/1/37.

Defendant's Appeal

April 22, 1937. Filed stipulation waiving supersedeas bond.

April 23, 1937. Filed petition and order allowing appeal. Patterson, J.

April 23, 1937. Filed notice of appeal.

April 23, 1937. Filed assignment of errors.

[fol. 7] In United States District Court

[Title omitted]

Summons in Ætna Insurance Company Action

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the

complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable, John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 9th day of April A. D. 1934.

Charles Weiser, Clerk.

Bigham, Englar, Jones & Houston, Plaintiff's Attorneys, Office and Post Office Address, 64 Wall St., Borough of Manhattan, City of New York. (Seal.)

[fol. 8] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINT IN ÆTNA INSURANCE COMPANY ACTION

Plaintiff complains of defendant and alleges:

1. The ground upon which the jurisdiction of this Court depends, is diversity of citizenship. At all times hereinafter mentioned, plaintiff was, and now is, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and a citizen and inhabitant of said State, having an office and place of business at No. 89 Maiden Lane, County, Southern District and State of New York; and defendant was, and now is, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and a citizen and inhabitant of that State.

2. The matter in controversy herein, exceeds, exclusive of interest and costs, the sum of $3,000.

3. On or about May 1, 1918, plaintiff issued its valued policy of insurance upon the S. S. "Almirante", wherein and whereby it insured defendant, as owner of the said ves-
[fol. 9] sel, against loss by collision and certain other perils in the amount of $18,978 for one year from said date. In

and by said policy it was expressly provided and agreed that said vessel was valued at $632,610. The defendant also procured other policies of similar tenor, the aggregate of which, together with the amount carried by the defendant as self-insurer, amounted to $632,610.

4. On or about September 6, 1918, and while said policy was still in full force and effect, said vessel was in collision with the S. S. "Hisko", and became a total loss by reason of said collision.

5. Thereafter defendant abandoned the "Almirante" to the hull underwriters, including plaintiff, and claimed the sum insured in payment of a total loss.

6. On or about December 5, 1918, plaintiff accepted said abandonment and paid to defendant the sum insured, namely, $18,978, being payment in full of defendant's claim for the total loss of said vessel under said policy.

7. Upon information and belief, thereafter defendant brought suit against the owner of the S. S. "Hisko" and recovered $1,761,693.02, being the value of the S. S. "Almirante" and her equipment insured under the said policy mentioned in paragraph 3. Defendant's legal and other expenses in respect of said litigation and recovery amounted to $300,024.53, leaving a net recovery of $1,461,669.49, of which defendant has paid to plaintiff $9,489 on September 28, 1932, and $7,356.24 on November 28, 1932, in all $16,845.24.

[fol. 10] 8. The net amount recovered by defendant from the owner of the "Hisko" for the loss of the "Almirante", namely, $1,461,668.49, is more than double the amount at which said vessel was valued by agreement between plaintiff and defendant in the policy of insurance issued by plaintiff to defendant, as set forth in paragraph 3 hereof. If such net recovery of $1,461,668.49 is distributed pro rata among all the said underwriters, in the proportion their policies bear to the insured value of $632,610, the plaintiff is entitled to receive $43,850.04 as its share of the net recovery, less $16,845.24.

9. If the share of the recovery due to the plaintiff is limited to reimbursement, then the plaintiff is entitled to receive, as its share of the recovery, the amount it paid to

defendant, namely, $18,978, with interest thereon as follows: on $18,978 from December 16, 1918 to September 28, 1932; on $9,489 from September 28, 1932 to November 28, 1932; and on $2,132.76 from November 28, 1932, less $16,845.24.

Wherefore, plaintiff demands judgment against the defendant for $27,004.80 with interest and costs, and for such other relief as may be just.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiff, 64 Wall Street, New York, N. Y.

[fol. 11] *Duly sworn to by Martin Detels. Jurat omitted in printing.*

[fol. 12] In United States District Court

[Title omitted]

Answer in Ætna Insurance Company Action

The defendant, answering the complaint herein, alleges as follows:

1. It denies that it has any knowledge or information sufficient to form a belief as to the organization of the plaintiff. It admits the other allegations contained in Paragraph 1 of the complaint.

2. It admits the allegations contained in Paragraph 2 of the complaint.

3. It admits the allegations contained in Paragraph 3 of the complaint, but for greater accuracy and completeness refers to the original policy of insurance which is in the custody of the plaintiff.

4. It admits the allegations contained in Paragraph 4 of the complaint.

5. It admits the allegations contained in Paragraph 5 of the complaint. A copy of the notice of abandonment is attached hereto marked Schedule "A".

[fol. 13] 6. It denies that the hull underwriters, including the plaintiff, accepted said abandonment.

It admits the other allegations contained in Paragraph 6 of the complaint.

7. It admits that thereafter it brought suit against the owner of the S. S. "Hisko" and recovered $1,761,693.02, being the actual value of the S. S. "Almirante" and her equipment, partially insured in the said policy mentioned in Paragraph 3 of the complaint. It admits the allegations contained in the second sentence of Paragraph 7 of the complaint.

8. It admits the allegations contained in Paragraph 8 of the complaint.

9. It denies the allegations contained in Paragraph 9 of the complaint.

Further Answering, Defendant Alleges:

10. In addition to the policies of insurance referred to in Paragraph 3 of the complaint, the defendant also, in accordance with the customary practice, procured other policies of insurance upon the S. S. "Almirante" for increased valuation in the sum of £65,105, which additional insurance covered only against total and/or constructive total loss and was permitted by the terms of the hull policies.

11. The S. S. "Hisko" which collided with the S. S. "Almirante", as alleged in Paragraph 4 of the complaint, was owned by the United States of America.

[fol. 14] 12. Thereafter the defendant and the various hull underwriters, including the plaintiff herein, jointly retained attorneys to prosecute the claim for damages occasioned by the said loss of the S. S. "Almirante" against the United States of America as owner of the S. S. "Hisko".

13. The said attorneys, pursuant to their retainer and by instructions from the defendant and the hull underwriters, including the plaintiff herein, procured the passage of a Special Act of Congress authorizing suit on the part of the owner of the S. S. "Almirante", against the United States of America. No recovery against the United States could have been had without a Special Act of Congress. Said act of Congress, known as Private Law No. 398, was enacted by the 69th Congress, Second Session, s. 2899, duly approved

by the President of the United States of American on February 26, 1927, and entitled "An Act for the Relief of the Owner of the American Steamship Almirante, etc.". This Act provided that any amount recovered against the United States of America for the loss of the S. S. "Almirante" should be without interest. Without this proviso the Act could not have been obtained.

Copy of said Act is annexed hereto, marked Schedule "B".

14. Thereafter said attorneys, pursuant to their retainer by the defendant and the hull underwriters, including the plaintiff, and by their express instructions, filed a suit in the name of the owner of the S. S. "Almirante" in the United States District Court for the Southern District of New York against the United States of America as owner of the S. S. "Hisko" under the Special Act of Congress [fol. 15] referred to above, and recovered the sum of $1,761,693.02 as the actual value of the S. S. "Almirante" and her equipment at the time of her loss. Payment of this judgment was received by the said attorneys on July 26, 1932. In accordance with the provisions of the Act of Congress under which the suit was brought, no interest was allowed on the recovery and no interest was in fact recovered.

15. The necessary legal and other expenses incurred in respect to said litigation, after deduction of taxable costs recovered, amounted to $300,024.53, leaving a net recovery of $1,461,668.49. A portion of said recovery was paid over by said attorneys to Johnson & Higgins, average adjusters, for distribution to the various underwriters; the balance of said net recovery was paid over by said attorneys to the defendant herein. As soon as the proper calculations could be made, Messrs. Johnson & Higgins paid to the plaintiff as its share of said net recovery, the amounts as alleged in Paragraph 7 of the complaint.

16. The sum of $16,845.24 which was paid to the plaintiff as alleged in Paragraph 7 of the complaint was arrived at as follows: Plaintiff was credited with the amount of its payment to the defendant, pursuant to the terms of its policy of insurance (after deduction of plaintiff's proportion of amount received on sale of lifeboats recovered), in the net amount of $18,963.00; to this sum was added the amount of bank interest earned thereon from the date on which the

judgment was paid by the United States until the plaintiff received payment of its share thereof, amounting to $39.98; from this total was subtracted the plaintiff's proportion [fol. 16] of legal fees and other expenses amounting to $2,157.74.

17. The premium paid by the defendant to the plaintiff for its policy of insurance on the S. S. "Almirante" was based upon the proportion of the agreed value of the S. S. "Almirante" amounting to $632,610.00, specifically stated in plaintiff's valued policy, and not upon that proportion of the actual value of said vessel as determined in the suit which resulted in the recovery as aforesaid.

18. Plaintiff has received in full the total amount to which it is entitled under its rights of subrogation.

Wherefore, the defendant demands that the complaint herein be dismissed, with costs, and such other and further relief as may be just.

Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, Office and P. O. Address, 27 William Street, Borough of Manhattan, City of New York.

Duly sworn to by Arthur E. Nicholson. Jurat omitted in printing.

[fol. 17] SCHEDULE "A", ANNEXED TO ANSWER IN ÆTNA INSURANCE COMPANY ACTION

October 25, 1918.

Ætna Insurance Company:

"Almirante"

You have already been advised that this vessel was in collision with the Steamer "Hisco" on September 6, 1918, and was sunk.

The owners are of the opinion that she cannot be saved, or that if she be saved, the cost of saving her with the damage sustained will exceed a moiety of her value.

They have, therefore, instructed us to abandon to you all their right, title and interest in and to the said vessel as far as insured by you under your policy No. 6315 for $18,-

978.00 valued at $632,610, and to claim from you as for a total loss the sum insured. This we hereby do.

Yours truly, Johnson & Higgins, (Sgd.) J. P. Nelson, Manager, Adjusting Department.

[fol. 18] SCHEDULE "B", ANNEXED TO ANSWER IN ÆTNA INSURANCE COMPANY ACTION

"*Be it enacted, etc.*, That the claim of the owner of the American Steamship *Almirante* and the claims of the owners of cargo laden aboard thereof, against the United States of America for damages and loss alleged to have been caused by collision between said steamship and the U. S. S. *Hisko*, on or about the 6th day of September, 1918, off the coast of the State of New Jersey, may be sued for by the owner of the said steamship *Almirante* and the said owners of cargo in the District Court of the United States for the Southern District of New York, sitting as a court of admiralty and acting under the rules governing such court; and the said court shall have jurisdiction to hear, consider, and determine such suits and to enter judgments or decrees for the amounts of such damages and costs, if any, as shall be found to be due against the United States in favor of the owner of the said steamship *Almirante* and said owners of cargo or against the owner of the said steamship *Almirante* and said owners of cargo, in favor of the United States, upon the same principles and measures of liability as in like suits in admiralty between private parties, and with the same rights of appeal, except that no interest shall be paid on any claim; Provided, That such notices of the suits shall be given to the Attorney General of the United States as may be provided by orders of the said court, and it shall be the duty of the Attorney General to cause the United States attorney in such district to appear and defend for the United States; *Provided further*, That said suits shall be brought and commenced within four months of the date of the passage of this act."

[fol. 19] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUMMONS IN UNION MARINE, ETC., ACTION

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable, John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 9th day of April A. D. 1934.

Charles Weiser, Clerk.

Bigham, Englar, Jones & Houston, Plaintiff's Attorneys, Office and Post Office Address, 64 Wall St., Borough of Manhattan, City of New York. (Seal.)

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINT IN UNION MARINE, ETC., ACTION

Plaintiff complains of defendant and alleges:

1. The ground upon which the jurisdiction of this Court depends, is diversity of citizenship. At all the times hereinafter mentioned, plaintiff was, and now is, a corporation organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Northern Ireland, having an office and place of business at No. 116 John Street, County, Southern District, and State of New York; and defendant was, and now is, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and a citizen and inhabitant of that State.

2. The matter in controversy herein, exceeds, exclusive of interest and costs, the sum of $3,000.

3. On or about May 1, 1918, plaintiff issued its valued policy of insurance upon the S. S. "Almirante", wherein [fol. 21] and whereby it insured defendant, as owner of the said vessel, against loss by collision and certain other perils in the amount of $6,326 for one year from said date. In and by said policy it was expressly provided and agreed that said vessel was valued at $632,610. The defendant also procured other policies of similar tenor, the aggregate of which, together with the amount carried by the defendant as self-insurer, amounted to $632,610.

4. On or about September 6, 1918, and while said policy was still in full force and effect, said vessel was in collision with the S. S. "Hisko", and became a total loss by reason of said collision.

5. Thereafter defendant abandoned the "Almirante" to the hull underwriters, including plaintiff, and claimed the sum insured in payment of a total loss.

6. On or about January 2, 1919, plaintiff accepted said abandonment and paid to defendant the sum insured, namely, $6,326, being payment in full of defendant's claim for the total loss of said vessel under said policy.

7. Upon information and belief, thereafter defendant brought suit against the owner of the S. S. "Hisko" and recovered $1,761,693.02, being the value of the S. S. "Almirante" and her equipment insured under the said policy mentioned in paragraph 3. Defendant's legal and other expenses in respect of said litigation and recovery amounted to $300,024.53, leaving a net recovery of $1,461,668.49, of which defendant has paid to plaintiff $3,163 on September 28, 1932, and $2,452.08 on November 28, 1932, in all $5,615.08.

[fol. 22] 8. The net amount recovered by defendant from the owner of the "Hisko" for the loss of the "Almirante", namely, $1,461,668.49, is more than double the amount at which said vessel was valued by agreement between plaintiff and defendant in the policy of insurance issued by plaintiff to defendant, as set forth in paragraph 3 hereof. If such net recovery of $1,461,668.49 is distributed pro rata

among all the said underwriters, in the proportion their policies bear to the insured value of $632,610, the plaintiff is entitled to receive $14,616.68 as its share of the net recovery, less $5,615.08.

9. If the share of the recovery due to the plaintiff is limited to reimbursement, then the plaintiff is entitled to receive, as its share of the recovery, the amount it paid to defendant, namely, $6,326, with interest thereon as follows: on $6,326 from December 16, 1918 to September 28, 1932; on $3,163 from September 28, 1932 to November 28, 1932; and on $710.82 from November 28, 1932, less $5,615.08.

Wherefore, plaintiff demands judgment against the defendant for $9,001.60, with interest and costs, and for such other relief as may be just.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiff, 64 Wall Street, New York, N. Y.

[fol. 23] *Duly sworn to by Martin Detels. Jurat omitted in printing.*

[fol. 24] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER IN UNION MARINE, ETC., ACTION

The defendant, answering the complaint herein, alleges as follows:

1. It denies that it has any knowledge or information sufficient to form a belief as to the organization of the plaintiff. It admits the other allegations contained in Paragraph 1 of the complaint.

2. It admits the allegations contained in Paragraph 2 of the complaint.

3. It admits the allegations contained in Paragraph 3 of the complaint, but for greater accuracy and completeness refers to the original policy of insurance which is in the custody of the plaintiff.

4. It admits the allegations contained in Paragraph 4 of the complaint.

5. It admits the allegations contained in Paragraph 5 of the complaint. A copy of the notice of abandonment is [fol. 25] attached hereto, marked Schedule "A".

6. It denies that the hull underwriters, including the plaintiff, accepted said abandonment.
It admits the other allegations contained in Paragraph 6 of the complaint.

7. It admits that thereafter it brought suit against the owner of the S. S. "Hisko" and recovered $1,761,693.02, being the actual value of the S. S. "Almirante" and her equipment, partially insured in the said policy mentioned in Paragraph 3 of the complaint. It admits the allegations contained in the second sentence of Paragraph 7 of the complaint.

8. It admits the allegations contained in Paragraph 8 of the complaint.

9. It denies the allegations contained in Paragraph 9 of the complaint.

Further Answering, Defendant Alleges:

10. In addition to the policies of insurance referred to in Paragraph 3 of the complaint, the defendant also, in accordance with the customary practice, procured other policies of insurance upon the S. S. "Almirante" for increased valuation in the sum of £65,105, which additional insurance covered only against total and/or constructive total loss and was permitted by the terms of the hull policies.

11. The S. S. "Hisko", which collided with the S. S. "Almirante", as alleged in Paragraph 4 of the complaint, [fol. 26] was owned by the United States of America.

12. On or about the 28th day of January, 1919, the plaintiff paid to defendant the amount of $6,326.00 on account of the total loss of said vessel under Policy No. 351, under and pursuant to the following subrogation agreement:

"To the Union Marine Insurance Company, Limited, New York.

DEAR SIRS:

In consideration of your paying our claim for Total loss on Hull of 'Almirante' (S) and insured under policy No. 351, we hereby assign to you all of our rights and claims to any sum or sums of money to the extent of but not exceeding $6326. which may be payable to, or recoverable by us, or in our names, in respect of the undermentioned interest, whether on account of Salvage therefrom or on any other account whatever, and we authorize you to use our names in any action or proceedings you may be advised to bring with respect to any of the above mentioned matters and we undertake ourselves to do or concur in any matters or proceedings which you may deem expedient or necessary in any such action or proceedings and generally to assist therein by all means in our power. We further undertake if called upon by you so to do ourselves to undertake any such action or proceedings as you may direct on your behalf, it being understood that you are to indemnify us against any costs, charges or expenses to be incurred in respect of any proceedings to the extent of but not ex-
[fol. 27] ceeding $6326.—taken by virtue of this agreement.

Signed in duplicate this 28th day of January, 1919.

United Fruit Company, by (Signed) John W. Damon, Treasurer.

Description of Interest Above Referred To:

Above steamer sunk in collision September 6th, 1918. Our file 12183."

13. Thereafter, the defendant and the various hull underwriters, including the plaintiff herein, jointly retained attorneys to prosecute the claim for damages occasioned by the said loss of the S. S. "Almirante" against the United States of America, as owner of the S. S. "Hisko".

14. The said attorneys, pursuant to their retainer and by instructions from the defendant and the hull underwriters, including the plaintiff herein, procured the passage of a Special Act of Congress authorizing suit on the part of the owner of the S. S. "Almirante" against the United States of America. No recovery against the United States

could have been had without a Special Act of Congress. Said Act of Congress, known as Private Law No. 398, was enacted by the 69th Congress, Second Session, s. 2899, duly approved by the President of the United States of America on February 26, 1927, and entitled "An Act for the Relief of the Owner of the American Steamship 'Almirante', etc.". This Act provided that any amount recovered against the United States of America for the loss of the S. S. "Almirante" should be without interest. Without this proviso, [fol. 28] the Act could not have been obtained.

Copy of said Act is annexed hereto, marked Schedule "B".

15. Thereafter, said attorneys, pursuant to their retainer by the defendant and the hull underwriters, including the plaintiff, and by their express instructions, filed a suit in the name of the owner of the S. S. "Almirante" in the United States District Court for the Southern District of New York against the United States of America, as owner of the S. S. "Hisko", under the Special Act of Congress referred to above, and recovered the sum of $1,761,693.02 as the actual value of the S. S. "Almirante" and her equipment at the time of her loss. Payment of this judgment was received by the said attorneys on July 26, 1932. In accordance with the provisions of the Act of Congress under which the suit was brought, no interest was allowed on the recovery and no interest was in fact recovered.

16. The necessary legal and other expenses incurred in respect to said litigation, after deduction of taxable costs recovered, amounted to $300,024.53, leaving a net recovery of $1,461,668.49. A portion of said recovery was paid over by said attorneys to Johnson & Higgins, average adjusters, for distribution to the various underwriters; the balance of said net recovery was paid over by said attorneys to the defendant herein. As soon as the proper calculations could be made, Messrs. Johnson & Higgins paid to the plaintiff as its share of said net recovery the amounts as alleged in Paragraph 7 of the complaint.

[fol. 29] 17. The sum of $5,615.08 which was paid to the plaintiff, as alleged in Paragraph 7 of the complaint, was arrived at as follows: Plaintiff was credited with the amount of its payment to the defendant, pursuant to the terms of its policy of insurance (after deduction of plaintiff's pro-

portion of amount received on sale of lifeboats recovered) in the net amount of $6,321.00; to this sum was added the amount of bank interest earned thereon from the date on which the judgment was paid by the United States until the plaintiff received payment of its share thereof, amounting to $13.33; from this total was subtracted the plaintiff's proportion of legal fees and other expenses amounting to $719.25.

18. The premium paid by the defendant to the plaintiff for its policy of insurance on the S. S. "Almirante" was based upon the proportion of the agreed value of the S. S. "Almirante" amounting to $632,610.00, specifically stated in plaintiff's valued policy, and not upon that proportion of the actual value of said vessel as determined in the suit which resulted in the recovery as aforesaid.

19. Plaintiff has received in full the total amount to which it is entitled under its rights of subrogation.

Wherefore, the defendant demands that the complaint herein be dismissed, with costs, and such other and further relief as may be just.

Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, Office & P. O. Address, 27 William Street, Borough of Manhattan, City of New York.

[fol. 30] *Duly sworn to by Arthur E. Nicholson. Jurat omitted in printing.*

SCHEDULE A, ANNEXED TO ANSWER IN UNION MARINE, ETC., ACTION

(This schedule is identical in substance with Schedule A, Annexed to Answer in Ætna Insurance Company Action, printed herein at p. 17.)

SCHEDULE B, ANNEXED TO ANSWER IN UNION MARINE, ETC., ACTION

(This schedule is identical with Schedule B, Annexed to Answer in Ætna Insurance Company action, printed herein at p. 18.)

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUMMONS IN BOSTON INSURANCE COMPANY ACTION

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable, John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 9th day of April, A. D. 1934.

Charles Weiser, Clerk.

Bigham, Englar, Jones & Houston, Plaintiff's Attorneys, Office and Post Office Address, 64 Wall St., Borough of Manhattan, City of New York. (Seal.)

[fol. 32] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINT IN BOSTON INSURANCE COMPANY ACTION

Plaintiff complains of defendant and alleges:

1. The ground upon which the jurisdiction of this Court depends is diversity of citizenship. At all the times hereinafter mentioned, plaintiff was, and now is, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, and a citizen and inhabitant of said State, having an office and place of business at No. 116 John Street, County, Southern District, and State of New York; and defendant was, and now is, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and a citizen and inhabitant of that State.

2. The matter in controversy herein, exceeds, exclusive of interest and costs, the sum of $3,000.

3. On or about May 1, 1918, plaintiff issued its valued policy of insurance upon the S. S. "Almirante", wherein and whereby it insured defendant, as owner of the said vessel, against loss by collision and certain other perils [fol. 33] in the amount of $15,815. for one year from said date. In and by said policy it was expressly provided and agreed that said vessel was valued at $632,610. The defendant also procured other policies of similar tenor, the aggregate of which, together with the amount carried by the defendant as self-insurer, amounted to $632,610.

4. On or about September 6, 1918, and while said policy was still in full force and effect, said vessel was in collision with the S. S. "Hisko", and became a total loss by reason of said collision.

5. Thereafter defendant abandoned the "Almirante" to the hull underwriters, including plaintiff, and claimed the sum insured in payment of a total loss.

6. On or about December 16, 1918, plaintiff accepted said abandonment and paid to defendant the sum insured, namely $15,815, being payment in full of defendant's claim for the total loss of said vessel under said policy.

7. Upon information and belief, thereafter defendant brought suit against the owner of the S. S. "Hisko" and recovered $1,761,693.02, being the value of the S. S. "Almirante" and her equipment insured under the said policy mentioned in paragraph 3. Defendants legal and other expenses in respect of said litigation and recovery amounted to $300,024.53, leaving a net recovery of $1,461,668.49, of which defendant has paid to plaintiff $7,907.50 on September 28, 1932, and $6,130.21 on November 28, 1932, in all $14,037.71.

8. The net amount recovered by defendant from the owner of the "Hisko" for the loss of the "Almirante", namely [fol. 34] $1,461,668.49, is more than double the amount at which said vessel was valued by agreement between plaintiff and defendant in the policy of insurance issued by plaintiff to defendant, as set forth in paragraph 3 hereof. If such net recovery of $1,461,668.49 is distributed pro rata

among all the said underwriters, in the proportion their policies bear to the insured value of $632,610., the plaintiff is entitled to receive $36,541.71 as its share of the net recovery, less $14,037.71.

9. If the share of the recovery due to the plaintiff is limited to reimbursement, then the plaintiff is entitled to receive, as its share of the recovery, the amount it paid to defendant, namely, $15,815, with interest thereon as follows: on $15,815 from December 16, 1918 to September 28, 1932; on $7,907.50 from September 28, 1932 to November 28, 1932; and on $1,777.29 from November 28, 1932, less $14,037.71.

Wherefore, plaintiff demands judgment against the defendant for $22,504. with interest and costs, and for such other relief as may be just.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiff, 64 Wall Street, New York, N. Y.

[fol. 35] *Duly sworn to by Martin Detels. Jurat omitted in printing.*

[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER IN BOSTON INSURANCE COMPANY ACTION

The defendant, answering the complaint herein, alleges as follows:

1. It denies that it has any knowledge or information sufficient to form a belief as to the organization of the plaintiff. It admits the other allegations contained in Paragraph 1 of the complaint.

2. It admits the allegations contained in Paragraph 2 of the complaint.

3. It admits the allegations contained in Paragraph 3 of the complaint, but for greater accuracy and completeness refers to the original policy of insurance which is in the custody of the plaintiff.

4. It admits the allegations contained in Paragraph 4 of the complaint.

5. It admits the allegations contained in Paragraph 5 of the complaint. A copy of the notice of abandonment is [fol. 37] attached hereto, marked Schedule "A".

6. It denies that the hull underwriters, including the plaintiff, accepted said abandonment.

It admits the other allegations contained in Paragraph 6 of the complaint.

7. It admits that thereafter it brought suit against the owner of the S. S. "Hisko" and recovered $1,761,693.02, being the actual value of the S. S. "Almirante" and her equipment, partially insured in the said policy mentioned in Paragraph 3 of the complaint. It admits the allegations contained in the second sentence of Paragraph 7 of the complaint.

8. It admits the allegations contained in Paragraph 8 of the complaint.

9. It denies the allegations contained in Paragraph 9 of the complaint.

Further answering, defendant alleges:

10. In addition to the policies of insurance referred to in Paragraph 3 of the complaint, the defendant also, in accordance with the customary practice, procured other policies of insurance upon the S. S. "Almirante" for increased valuation in the sum of £65,105, which additional insurance covered only against total and/or constructive total loss and was permitted by the terms of the hull policies.

11. The S. S. "Hisko", which collided with the S. S. "Almirante", as alleged in Paragraph 4 of the complaint, [fol. 38] was owned by the United States of America.

12. On or about the 28th day of January, 1919, the plaintiff paid to defendant the amount of $15,815, on account of the total loss of said vessel under Policy No. 75285, under and pursuant to the following subrogation agreement:

"$15,815.00.

Subrogation Receipt

"Received of the Boston Insurance Company, Boston, Massachusetts, Fifteen Thousand and Eight Hundred Fifteen Dollars in full payment, release and discharge of all

claims or demands against the said Company, arising from or connected with total loss to Hull S/S "Almirante" Coll'n S. S. "Hisco", which loss or damage arose or occurred on or about the — day of ——, 19—; and in full payment, release and discharge of all claims or demands against the said Company under the certain Policy of Insurance made by said Company and numbered 75285 arising from or connected with any such loss or damage; and for and in consideration of such payment the undersigned hereby assigns and transfers to the said Company all claims and demands against any person, persons, vessels, or property, arising from or connected with such loss or damage, and the said Company is subrogated to all rights of the undersigned with respect to said loss or damage.

"We do hereby sell, assign and transfer to said Boston Insurance Company all our rights and interest in the above, [fol. 39] to the extent of $15,815.00 to have and to hold the same to the said Company its successors and assigns to their own use forever.

"Dated this 28th day of January, 1919, at New York.

United Fruit Company, by (Signed) John W. Damon, Treasurer."

13. Thereafter, the defendant and the various hull underwriters, including the plaintiff herein, jointly retained attorneys to prosecute the claim for damages occasioned by the said loss of the S. S. "Almirante" against the United States of America, as owner of the S. S. "Hisko".

14. The said attorneys, pursuant to their retainer and by instructions from the defendant and the various hull underwriters, including the plaintiff herein, procured the passage of a Special Act of Congress authorizing suit on the part of the owner of the S. S. "Almirante" against the United States of America. No recovery against the United States could have been had without a Special Act of Congress. Said Act of Congress, known as Private Law No. 398, was enacted by the 69th Congress, Second Session, s. 2899, duly approved by the President of the United States of America, on February 26, 1927, and entitled "An Act for the Relief of the Owner of the American Steamship Almirante, etc.". This Act provided that any amount recovered against the United States of America for the loss of the S. S. "Almirante" should be without interest. Without this proviso the Act could not have been obtained.

[fol. 40] Copy of said Act is annexed hereto, marked Schedule "B".

15. Thereafter, said attorneys, pursuant to their retainer by the defendant and the hull underwriters, including the plaintiff, and by their express instructions, filed a suit in the name of the owner of the S. S. "Almirante" in the United States District Court for the Southern District of New York against the United States of America, as owner of the S. S. "Hisko", under the Special Act of Congress referred to above, and recovered the sum of $1,761,693.02 as the actual value of the S. S. "Almirante" and her equipment at the time of her loss. Payment of this judgment was received by the said attorneys on July 26, 1932. In accordance with the provisions of the Act of Congress under which the suit was brought, no interest was allowed on the recovery and no interest was in fact recovered.

16. The necessary legal and other expenses incurred in respect to said litigation, after deduction of taxable costs recovered, amounted to $300,024.53, leaving a net recovery of $1,461,668.49. A portion of said recovery was paid over by said attorneys to Johnson & Higgins, average adjusters, for distribution to the various underwriters; the balance of said net recovery was paid over by said attorneys to the defendant herein. As soon as the proper calculations could be made, Messrs. Johnson & Higgins paid to the plaintiff as its share of said net recovery the amounts as alleged in Paragraph 7 of the complaint.

[fol. 41] 17. The sum of $14,037.71 which was paid to the plaintiff as alleged in Paragraph 7 of the complaint was arrived at as follows: Plaintiff was credited with the amount of its payment to the defendant, pursuant to the terms of its policy of insurance (after deduction of plaintiff's proportion of amount received on sale of lifeboats recovered) in the net amount of $15,802.50; to this sum was added the amount of bank interest earned thereon from the date on which the judgment was paid by the United States until the plaintiff received payment of its share thereof, amounting to $33.32; from this total was subtracted the plaintiff's proportion of legal fees and other expenses amounting to $1,798.11.

18. The premium paid by the defendant to the plaintiff for its policy of insurance on the S. S. "Almirante" was

based upon the proportion of the agreed value of the S. S. "Almirante" amounting to $632,610.00 specifically stated in plaintiff's valued policy, and not upon that proportion of the actual value of said vessel as determined in the suit which resulted in the recovery as aforesaid.

19. Plaintiff has received in full the total amount to which it is entitled under its rights of subrogation.

Wherefore, the defendant demands that the complaint herein be dismissed, with costs, and such other and further relief as may be just.

Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, Office & P. O. Address, 27 William Street, Borough of Manhattan, City of New York.

[fol. 42] *Duly sworn to by Arthur E. Nicholson. Jurat omitted in printing.*

SCHEDULE A, ANNEXED TO ANSWER IN BOSTON INSURANCE COMPANY ACTION

(This schedule is identical in substance with Schedule A, Annexed to Answer in Ætna Insurance Company Action printed herein at page 17.)

SCHEDULE B, ANNEXED TO ANSWER IN BOSTON INSURANCE COMPANY ACTION

(This schedule is identical with Schedule B, Annexed to Answer in Ætna Insurance Company Action printed herein at page 18.)

[fol. 43] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

L-57-271

ÆTNA INSURANCE COMPANY, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant

L-57-272

UNION MARINE & GENERAL INSURANCE COMPANY, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant

L-57-273

BOSTON INSURANCE COMPANY, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant

New York, October 30, 1936;
10 A. M.

Before Hon. Robert P. Patterson, District Judge

APPEARANCES

Bigham, Englar, Jones & Houston, Esqrs., Attorneys for Plaintiffs; D. Roger Englar, Esq., and Martin Detels, Esq., of Counsel.

Kirlin, Campbell, Hickox, Keating & McGrann, Esqs., Attorneys for Defendant; Cletus Keating, Esq., and Richard L. Sullivan, Esq., of Counsel.

[fol. 44] COLLOQUY

Mr. Englar: Your Honor, these three cases are very similar, in fact almost identical, and counsel would prefer to try them together.

The Court: Is that agreeable?

Mr. Keating: Yes.

The Court: Very well, you may enter an order consolidating them.

Mr. Englar: It is understood that all the evidence introduced in one case will apply to the other case except on matters of materiality and relevancy.

Mr. Keating: That is all right.

The Court: These are actions at law, are they not?

Mr. Englar: Yes, but we have agreed to try them before your Honor and a jury of one.

The Court: Is there a stipulation to that effect?

Mr. Englar: I will put it on the record, your Honor.

The Court: Very well.

Mr. Englar: It is hereby stipulated by and between the attorneys for the respective parties hereto, that this case may be tried by the Court before a jury of one; that each side shall make a motion at the close of the case for a directed verdict in its favor; and that the Court shall direct a verdict with the same force and effect as if a jury of twelve were then present.

Mr. Keating: That is agreed to.

The Court: Do you want me to read the pleadings?

Mr. Englar: I don't think it is necessary. I can state quite briefly what the issues are.

The Court: Swear a juror.

(A juror was sworn.)

(Mr. Englar then opened to the jury on behalf of the plaintiffs.)

(Mr. Keating opened to the jury on behalf of the defendant.)

[fol. 45] Mr. Englar: Most of the facts, in fact all of the facts, were stipulated and my friend has agreed that the various stipulations may be jointly offered, either side reserving their objections to relevancy and materiality. That will save going through the stipulations.

OFFERS IN EVIDENCE

Mr. Detels: I offer in evidence on behalf of both plaintiff and defendant the stipulation of facts in the case of Ætna Insurance Company against United Fruit Company, dated May 28, 1936.

(Marked Plaintiffs' Exhibit 1.)

Mr. Detels: I offer in evidence stipulation in the Boston Insurance Company case dated September 23, 1936, as Exhibit 2.

(Marked Plaintiffs' Exhibit 2.)

Mr. Detels: I offer in evidence supplemental stipulation in the Boston Insurance Company case.

Mr. Keating: That stipulation is apparently undated.

Mr. Englar: It is undated, yes.

(Marked Plaintiffs' Exhibit 3.)

Mr. Detels: I offer in evidence stipulation in the Union Marine case dated June 10, 1936.

(Marked Plaintiffs' Exhibit 4.)

Mr. Detels: Supplemental stipulation in the Union Marine case, undated.

(Marked Plaintiffs' Exhibit 5.)

Mr. Englar: I offer in evidence on behalf of plaintiffs the original Ætna Insurance Company policy No. 6315.

(Marked Plaintiffs' Exhibit 6.)

Mr. Englar: The original Boston policy No. 75,285.

(Marked Plaintiffs' Exhibit 7.)

[fol. 46] Mr. Englar: The original Union Marine policy No. 351.

(Marked Plaintiffs' Exhibit 8.)

Mr. Englar: Counsel jointly offer the recovery statement prepared by Messrs. Johnson & Higgins under date of November 22, 1932, with the same reservation as to relevancy and materiality as in the case of the stipulations.

The Court: What is that?

Mr. Englar: That is the recovery statement—the apportionment of the recovery prepared by the brokers for the owners.

(Marked Plaintiffs' Exhibit 9.)

Mr. Englar: If the Court please, I wish to prove one point of English law and counsel for the defendant has consented that instead of calling an expert, I may introduce the

relevant section of the Marine Insurance Act and one decision construing it.

The Court: How does the British law become relevant?

Mr. Englar: I think you will find it relevant on the P. P. I. policies which are paid in England, and to whom part of the recovery was paid. I therefore offer in evidence Section 4 of the Marine Insurance Act of 1906, and I understand that it is conceded that the act has remained continuously in force since it was passed.

Mr. Keating: I object merely as to the relevancy of English law to this proceeding, sir.

The Court: I will take it.

Mr. Keating: Exception.

(Marked Plaintiffs' Exhibit 10.)

Mr. Englar: I offer in evidence one English decision, subject to the same objection, of course.

[fol. 47] The Court: You don't have to offer that in evidence, do you?

Mr. Englar: I think perhaps for this purpose it should be in evidence, but I do not think it need be physically marked.

The Court: Why need it be in evidence?

Mr. Englar: Of course, your Honor may consult it as an authority, but I think, strictly as English law, I ought perhaps offer it in evidence.

The Court: All right.

Mr. Englar: The case is the case of John Edwards & Company v. Motor Union Insurance Company, Ltd., reported in 1922, 2 Kings Bench 249; 16 Aspinwall Maritime cases 89; 128 Law Times 276. I understand your Honor can consult the case without my physically putting in my copy.

The Court: Very well.

Mr. Englar: I would like to call one witness, your Honor, merely to explain the recovery statement. It involves a lot of figures and calculations and I would like to put on a witness.

ALEXANDER B. GRANT, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Englar:

Q. Mr. Grant, what is your present position?

A. I am the assistant United States manager of the Thames & Mersey Marine Insurance Company.

Q. Will you tell us briefly what experience you have had in marine insurance?

A. I was employed by the Thames & Mersey Marine In- [fol. 48] surance Company in Liverpool in 1898 and I served an apprenticeship there for five years. Later I spent several years in the underwriting and claims departments. Towards the end of 1919 I took over the management of the claims department in the New York branch. At the close of 1929 I was appointed assistant United States manager of the Thames & Mersey Marine Insurance Company.

Q. The Thames & Mersey, as I understand, is one of the companies that have an interest in the result of this litigation?

A. That is so.

Q. But is not one of the plaintiffs in these suits?

A. No.

The Court: Did they have a portion of the hull insurance?

Mr. Englar: Yes. I simply want it to appear that the witness is in a sense an interested witness.

The Court: I see.

Q. You are acquainted, Mr. Grant, with the various forms of statements, which are prepared and used in marine insurance, such as particular average statements, general average statements, and recovery statements, are you not?

A. That is so, sir.

Q. Have you at my request made an examination of this recovery statement, Exhibit 9?

A. I have, sir.

Q. Have you examined the policies, that is the American form of hull policy and the form of the British P. P. I. policies?

A. I have, sir.

Q. I informed you, did I not, that it had been stipulated that the payments made by the British underwriters had been made at the rate of $4.75¾?

A. That is right.

[fol. 49] Q. And you made your calculations on that basis?

A. Yes.

The Court: The basis made in 1918.

Mr. Englar: Yes, sir.

Q. Now, will you give us, Mr. Grant, in totals the amount of the American hull insurance, the amount of the English hull insurance and the amount of English P. P. I. insurance, and in dealing with the English insurance, will you give it to us in pounds and also in dollars?

A. The total insurances in force in 1918 are as follows:

American insurance on hull on an agreed valuation of $632,610 amounted to $335,282. This included a line of $50,609 retained by the United Fruit Company.

Q. Just a moment. The United Fruit Company was an insurer then to the extent of 50609/632,610ths of the total amount?

A. They had an 8 per cent interest.

Q. Proceed.

A. There were English insurances on hull totaling in pounds 61,305;

English insurances on P. P. I. policies totaling 65,105, or a total in pounds of 126,410 which converted at the exchange rate of $4.75¾ produced in dollars $600,395.57, making a grand total of the insurances in force of $936,677.57.

Q. That included, however, the line of 50,609/632,610ths carried by the Fruit Company?

A. That is so, sir.

Q. What was the award for the vessel including stores and sundries?

A. $1,763,013.38.

By the Court:

Q. Have you made a tabulation from the recovery statement?

A. Yes, sir.

[fol. 50] Mr. Englar: He has put in two pages here practically, and that is important in the recovery statement.

The Court: I understand it is a summary by the witness of the recovery statement.

Mr. Englar: Yes, sir.

The Witness: Do you wish me to carry on, sir?

Mr. Englar: Just a moment, please. Mr. Keating is checking the statement and suggests perhaps we might put it in.

The Court: Why not?

Mr. Englar: If he is satisfied it is correct, that is the simplest way of doing it.

The Court: Yes, it is a convenient summary.

Mr. Englar: There is a third page which will show that the hull underwriters also carried P. P. I., page 1.

Mr. Keating: I have no objection to its going in, sir. These figures are taken from the average statement that I agreed to.

The Court: You do not need a concession from the defendant on this, of course. If the witness testified that he took these summaries from the recovery statements and he is qualified, it can go in as a convenient summation of his testimony.

Mr. Keating: I do not object to the figures, but in the lower part of this thing the witness attempts to draw some conclusions. I would like to have him testify to that.

Mr. Englar: The figures on the first page perhaps do not mean so much without the next page. It runs over the next page.

Mr. Keating: Down to the end where the figures are?

[fol. 51] Mr. Englar: Down to the middle of page 2.

Mr. Keating: Suppose you just tear that off.

Mr. Englar: All right.

Mr. Keating: You can put in page 3 too if you like.

Mr. Englar: Very well, I will make that a separate exhibit.

I offer in evidence on behalf of the plaintiffs, a page and a half of calculations, being a summary taken by the witness from the recovery statement.

(Marked Plaintiffs' Exhibit 12.)

Mr. Englar: I also offer in evidence a tabulation showing a comparison of the hull and P. P. I. insurance placed in

England, that is, showing which of the hull underwriters were also underwriters of the P. P. I. policies.

(Marked Plaintiffs' Exhibit 13.)

Q. Now, Mr. Grant, in addition to extracting these figures from the statement, did you also determine just what the final position of the English hull underwriters was after the distribution of the proceeds made by the defendant, as compared with the position of the American hull underwriters?

A. I did, sir.

Q. Will you state how the distribution affected them relatively?

Mr. Keating: Just a moment. If this question is directed to asking how the English hull underwriters compared with the American hull underwriters, that is all right; but if [fol. 52] my friend wants to interject the fact that some of these underwriters also had P. P. I. policies I object to the relevancy, competency and materiality of such evidence.

The Court: Overruled.

Mr. Keating: Exception.

By Mr. Englar:

Q. Will you answer the question, please?

A. The American hull underwriters received approximately 90 per cent of the original payments which they had made. There was no P. P. I. insurance placed in this market. It was all placed in London, as the underwriters in England who wrote about 90 per cent of the total insurances placed on hull also wrote about two-thirds of the total insurances placed on disbursements, and as those underwriters although only receiving the sum or net proceeds as the American underwriters on the hull policies, that is approximately 90 per cent, those same underwriters received 50 per cent of the face value of their P. P. I. policies less a deduction for expenses, and the result was that those particular underwriters who had policies both on full insurance and P. P. I. received approximately the equivalent of 120 per cent of the amounts they had originally paid under their hull policies.

Mr. Englar: That is all.

Cross-examination.

By Mr. Keating:

Q. Mr. Grant, do you mean to suggest in any way that the English hull underwriters, as such, were treated in any different way from the American hull underwriters on the same policies?

A. No, I do not.

[fol. 53] Q. All hull underwriters were treated precisely the same?

A. Exactly the same.

Q. So what you are complaining about——.

Mr. Englar: The witness is not complaining, Mr. Keating, he is simply stating facts.

Mr. Keating: I didn't know. He had a rather nasty tone.

Q. Are you suggesting that the United Fruit Company acted unconscionably in paying back to the P. P. I. underwriters a portion of the recovery from the government?

Mr. Englar: I object. The witness has not passed on the moral aspect of this case. I do not think he was asked how he viewed the ethical aspects of the recovery.

The Court: Overruled.

A. It was a long question that you asked me. You wanted my opinion as to why the ship owners should make any payments to the P. P. I. underwriters?

Q. Don't you think it was a decent thing to do?

A. It was a very recent thing to do, but of course they did it on their own responsibility entirely.

Q. You are aware, aren't you, that the P. P. I. underwriters asked under the circumstances the Fruit Company to make some voluntary payment?

A. Exactly, sir.

Q. And the Fruit Company fell in with that suggestion?

A. Yes.

Q. And I take it that you do not think the Fruit Company acted unconscionably?

A. I think they acted generously, sir.

Q. We always thought so too. You were the American underwriters in those policies, weren't you?

A. Yes, sir.

[fol. 54] Q. You were also the British underwriter on those policies on hull?

A. Yes.

Q. But you were not a P. P. I. underwriter?

A. That is so.

Q. Did you accept a final settlement for your company or did your company accept a final settlement in England on the hull policies?

A. Yes, sir.

Q. So you took it in England but you are going to sue on it here; is that your position?

Mr. Englar: The position of course is not——

Mr. Keating: Don't help him out; he doesn't need it.

A. I can only state here—I am not sure whether you are asking me as a witness or as one of the interested underwriters.

Q. I am asking you the question as a witness under oath in this Court?

A. As a witness and also as an underwriter here, I can only speak for the United States branch of our company and say that we have joined with other American companies here in this action.

Q. And you also joined with the British underwriters in not making such claim?

A. Well, our head office did that.

Q. Doesn't your head office control the company here or do you control it?

A. As regards the attitude in this suit, we are getting a good deal of latitude, and we joined with our American underwriters.

Q. So it does not make any difference whether you have one position in England and another position here on precisely the same kind of policy, in your opinion?

A. Really, in fairness, I think you must admit in the American market the company very largely has to do very [fol. 55] largely the same as the other underwriters do, whereas if in the English market most of the underwriters were willing to accept a settlement, having in mind the fact that they were getting some P. P. I. dividends——

Q. You would not get in there?

A. We would not get in.

Q. Then you were not in the same position as the other underwriters?

A. We were not in the same position as the underwriters. After all, we had it from the same broker and very often an underwriter joins in suits although it is against his own interest to do so, it is done——

The Court: This gentleman has suggested that the English underwriters were influenced in accepting the settlement that Johnson & Higgins set out in their recovery statement by the fact that there was some P. P. I. insurance; that is this witness' testimony. His testimony on direct was a cut and dried affair. I suppose they could have put on a professor of mathematics to get for him the calculations on the recovery statement.

Mr. Keating: If he stuck to figures, but he went on to testify that all the English hull underwriters received 120 as compared with the 90 here.

The Witness: No, sir.

The Court: He said the majority and he happened to have two kinds of insurance and regarded that as an advantage.

Mr. Keating: That is as far as I wish to go on that except to ask the witness one question.

Q. You were aware, Mr. Grant, were you not, that the American underwriters asked the English underwriters to [fol. 56] participate in this suit and they declined?

A. May I point out, I understand after that lawyer's decision they had already been in touch with the owners or the owner's representatives and already made their bargain.

Redirect examination.

By Mr. Englar:

Mr. Englar: I think most of my friend's cross examination was a little beside the point which makes it necessary for me to pursue it a step further.

Q. It is a fact, is it not, Mr. Grant, that a number of the English companies are very closely affiliated by stock ownership?

Mr. Keating: I object.

The Court: Overruled.

Q. (Continued.) Is that true, Mr. Grant?
A. Yes.

Mr. Keating: If he knows.

Q. You know about your own company, don't you?
A. Yes.
Q. Is it a fact that the Thames & Mersey and the British and Foreign, for example, are pretty closely related by stock ownership?
A. Yes.

Mr. Englar: That is all.
The plaintiffs rest, your Honor.
Mr. Keating: The defendant rests.

MOTIONS FOR DIRECTED VERDICT

Mr. Englar: The plaintiffs move the Court for the direction of a verdict in their favor.
Mr. Keating: I move that the Court direct a verdict in favor of the defendant, dismissing the complaint with costs.

(Argument by counsel.)

The Court: I will reserve decision.

[fol. 57] IN UNITED STATES DISTRICT COURT

L 57-271, L 57-272, L 57-273

[Title omitted]

Order Amending Stenographer's Minutes Nunc Pro Tunc

Upon the annexed stipulation it is hereby
Ordered that the stenographer's minutes of the trial be amended nunc pro tunc by adding thereto the following:

DIRECTION OF VERDICT

December 11, 1936.

The Court: Verdict is directed in favor of the plaintiff Ætna Insurance Company for $2,132.76, in favor of Boston

Insurance Company for $1,777.29, and in favor of Union Marine and General Insurance Company for $710.92, each figure to carry interest from November 28, 1932.

Mr. Englar: Exception.

Mr. Keating: Exception.

MOTIONS TO SET ASIDE VERDICTS

Mr. Englar: I move to set aside the verdicts directed in favor of the plaintiffs Ætna Insurance Company, Boston Insurance Company, and Union Marine & General Insurance Company, respectively, against the defendant United Fruit Company, on the ground that the same are contrary [fol. 58] to law and contrary to the evidence.

The Court: Motion denied.

Mr. Englar: Exception.

Mr. Keating: I move to set aside the verdicts directed in favor of the plaintiffs Ætna Insurance Company, Boston Insurance Company and Union Marine & General Insurance Company, respectively, against the defendant United Fruit Company, on the ground that they are contrary to law and contrary to the evidence.

The Court: Motion denied.

Mr. Keating: Exception.

Dated, New York, March 3rd, 1937.

Robert P. Patterson, U. S. D. J.

It is hereby stipulated that the foregoing order be entered without prejudice to the rights of both parties to appeal from the judgments and orders of the trial court herein.

Dated, New York, March 2, 1937.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiffs. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant.

[fol. 59] PLAINTIFFS' EXHIBIT 1

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

L 57-271

ÆTNA INSURANCE COMPANY, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant

The following facts are hereby stipulated for the purpose of trial, subject to any objection which may be made to the admission into evidence of any of said facts upon the trial on any ground other than the ground that the facts are not sufficiently proved:

1. That at all the times mentioned in the complaint, plaintiff was, and now is, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and a citizen and inhabitant of said State, having an office and place of business at No. 89 Maiden Lane, County, Southern District, and State of New York.

2. That plaintiff's policy No. 6315 in the possession of defendant, is the policy referred to in paragraph "3" of the complaint, and may be admitted in evidence.

3. That the defendant procured other policies of insurance on the S. S. "Almirante" in the amount of £65,105, [fol. 60] upon the terms and conditions set forth in Exhibits "1", "2", "3" and "4" annexed hereto.

4. That the letter dated October 25, 1918, from Johnson & Higgins to plaintiff, copy of which is attached to the answer as Schedule "A", was received by the plaintiff; that on or about October 28, 1918, plaintiff wrote to Johnson & Higgins the letter, copy of which is attached hereto marked Exhibit "5"; that no efforts were ever made to salve the "Almirante"; and on or about December 5, 1918, plaintiff paid to defendant a total loss under its policy No. 6315.

5. That the defendant also collected £65,105 from the underwriters who issued the policies referred to in paragraph "3" hereof.

6. That the S. S. "Hisko", which collided with the S. S. "Almirante", was owned by the United States of America.

7. That the plaintiff and defendant and the other hull underwriters who had issued policies similar to plaintiff's policy No. 6315, jointly retained Kirlin, Woolsey & Hickox and its successor firms Kirlin, Woolsey, Campbell, Hickox & Keating, and Kirlin, Campbell, Hickox, Keating & McGrann, to prosecute the claim for damages occasioned by the loss of the S. S. "Almirante" against the United States of America.

8. That said attorneys, pursuant to their retainer and pursuant to instructions from the defendant and plaintiff and other hull underwriters, procured the passage of a Special Act authorizing suit against the United States of America.

[fol. 61] 9. That the copy of said Special Act attached to the answer as Schedule "B" is a correct copy of said Act; and that no further proof of said Act shall be necessary.

10. That thereafter said attorneys, pursuant to their retainer by the defendant and plaintiff and other hull underwriters, and by their express instructions, filed suit in the name of the owner of the S. S. "Almirante" in the United States District Court for the Southern District of New York against the United States as owner of the S. S. "Hisko", under the Special Act of Congress above referred to, and recovered the sum of $1,761,693.02 as the actual value of the S. S. "Almirante" and her equipment at the time of her loss.

11. The payment of this judgment was received by said attorneys on July 26, 1932.

12. That, in accordance with the provisions of the Act of Congress under which the suit was brought, no interest was allowed on the recovery; and no interest was, in fact, recovered.

13. That the reasonable and necessary legal and other expenses in respect of said litigation, after deduction of taxable costs recovered, amounted to $300,024.33.

14. That on September 27, 1932 and November 25, 1932, a portion of said recovery was paid over by said attorneys to Messrs. Johnson & Higgins for distribution to the various underwriters, including the plaintiff; and the balance of

said net recovery was paid over by said attorneys to the defendant herein.

[fol. 62] 15. Thereafter Johnson & Higgins, out of the funds in their hands, paid to the plaintiff the amounts alleged in paragraph "Seventh" of the complaint.

16. That the sum of $16,845.24, which was paid to the plaintiff as alleged in paragraph "Seventh" of the complaint, was arrived at as follows:

Plaintiff was credited with the amount of its payment to the defendant	$18,978.00
Less plaintiff's proportion, 18978/632610ths, of $500.00 received on the sale of lifeboats recovered	15.00
	$18,963.00
Add bank interest earned on $18963.00 from July 26, 1932, the date on which the judgment was paid by the United States, until the plaintiff received the payments alleged in paragraphs "Seventh" of the complaint	39.99
	$19,002.99
Deducted by defendant on account of legal fees and other expenses set forth in the recovery statement hereinafter referred to	2,157.75
Paid to plaintiff	$16,845.24

17. The recovery statement issued by Johnson & Higgins under date of November 22, 1932, or any part thereof, may [fol. 63] be offered in evidence by either party as prima facie evidence of any of the facts stated therein,—it being understood, however, that this stipulation is not to be construed as an admission by the plaintiff that the division and apportionment of the recovery as shown therein is proper.

18. As evidence of the course of the proceedings which led to the recovery here involved, either party may refer to any of the court decisions which were rendered in those proceedings.

Dated, New York, May 28, 1936.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiff. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant.

✓ Exhibit 1, Annexed to Plaintiffs' Exhibit 1.

S.G.

£ 27240

(No.55069)

Insured with:—

£ 6915 Brit.& For.Co
£ 2765 Marine Co.
£ 3460 Brit.Dom& Co
£ 1385 London & Prov.Co.
£ 1385 World Co.
£ 925 Economic Co.
£ 1385 Alliance Co.
£ 460 Century Co.
£ 1840 Employers Liab.
£ 8720 Lloyds U/rs.

The Underwriters on this policy hereby consent to give Willis, Faber & Co. Ltd. an immediate right of set-off in the event of claim

Be it known that WILLIS, FABER & CO, LTD, For account of whom it may concern

as well in their own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make assurance, and cause themselves and them, and every of them, to be insured, lost or not lost, at and from

Say for and during the space of twelve calendar months commencing at Noon 31st December 1917, and ending at Noon 31st December 1918

beginning and ending with Greenwich Mean Time.

upon any kind of Goods and Merchandises, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of and in the good Ship or Vessel, called the

Almirante

wherof is Master, under God, for this present Voyage,

or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called; beginning the Adventure upon the said Goods and Merchandises from the loading thereof aboard the said Ship as above

upon the said Ship, &c.,

and shall so continue and endure, during her Abode there, upon the said Ship, &c.; and further; until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandises whatsoever, shall be arrived at as above

upon the said Ship, &c., until she hath moored at Anchor Twenty-four Hours in good safety, and upon the Goods and Merchandises, until the same be there discharged and safely landed; and it shall be lawful for the said Ship, &c., in this Voyage, to proceed and sail to, and touch and stay at any Ports or Places whatsoever

without prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns the Assured, by Agreement between the Assured and the Assurers in this Policy, are and shall be valued at, say on

INCREASED VALUE OF HULL AND MACHINERY, &c.

Touching the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises, and Ship, &c., or any Part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises, and Ship, &c., or any Part thereof, without Prejudice to this Insurance; [illegible] And it is expressly declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property Insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much force and effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we the Assurers are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured at and after the Rate of Twenty five shillings per cent.

In WITNESS whereof, we the Assurers have subscribed our Names and Sums assured in

London, 9th January 191 8

Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

CANCELLED

N.B.—Corn, Fish, Salt, Fruit, Flour and Seed are Warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are Warranted free from Average under Five Pounds per Cent.

Exhibit 1, Annexed to Plaintiffs' Exhibit 1.

No. 188. Form B.

W. F. & Co., LTD.
TIME. (DISBURSEMENTS Incl. Exc. Hab.)

Attaching to policy for £ 29240
per Almaeda *£ and forming part thereof.*

1. As employment may offer, in Port and at Sea, in Docks and Graving Docks, and on Ways, Gridirons, and Pontoons, at all times, in all places, and on all occasions, services, and trades whatsoever, and wheresoever, under steam or sail; with leave to sail with or without Pilots, TO TOW AND BE TOWED, and to assist Vessels and/or Craft in all situations and to any extent, and to go on trial trips. Including all risk incidental to Steam and Steam Navigation. With liberty to discharge, exchange, and take on board, Goods, Specie, Passengers and Stores, wherever the Vessel may call at or proceed to without being deemed a deviation, and with liberty to carry Goods, Live Cattle, &c., on deck or otherwise. Including all risks of docking, undocking, changing docks, or moving in harbour and going on or off gridiron or graving dock as often as may be done during the currency of this policy.

2. And it is expressly declared and agreed that no acts of the Insurer or Insured, in recovering, saving, or preserving the property insured shall be considered as a WAIVER or acceptance of abandonment.

3. This insurance is against the risk of total loss and/or constructive total loss of vessel, and is also to cover its proportion as below of all claims under the four-fourths running down clause (including costs) not collectible under policies on hull and machinery, etc., by reason of the difference between the valuation expressed in those policies (or any incidental reduced valuations arising from the deduction therefrom, in process of adjustment, of any particular average or other claim involved) and the value for purposes of collision liability. The proportion of such claims payable by this policy shall be such proportion as the sum hereby insured bears either to the difference between the vessel's valuation as expressed in the policies on Hull and Machinery (or as above) and her valuation for purposes of collision liability—or to the total sum insured against excess liabilities if it exceeds such difference. To follow Hull Underwriters in the event of total or constructive or compromised total loss.

4. This insurance also specially to cover total loss or constructive total loss of Hull and Machinery through negligence of Master, Mariners, Engineers, or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the Machinery or Hull, or from explosions, riots, or other causes of whatsoever nature, arising either on shore or otherwise, howsoever, causing loss of the property hereby insured, provided such loss has not resulted from want of due diligence by the owners of the ship or any of them, or by the Manager.

5. In ascertaining whether the Vessel is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

6. Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

7. In the event of any breach of warranty or DEVIATION from the conditions of this policy, it is agreed to hold the assured covered; the premium to be arranged.

8. Should the vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge, or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium, to her port of destination.

9. To RETURN 7d. net per cent. for every 15 days the Vessel may be in Port or in Dock, during such period the Vessel being at the risk of the Underwriters; and having leave to dock, undock, and change docks, &c.; and 10d. net per cent. for every 15 days of unexpired time, if this insurance be cancelled, and arrival. A period in port falling between two Insurances to be allowed for pro rata on each, Underwriters on each Insurance agreeing to pay their pro rata proportion of the Return due.

10. The above clauses and conditions are additional to those contained in the Annexed Policy, and so far as they are inconsistent therewith are to supersede the same.

.....

This slip is no part of the policy, and is not to be attached thereto, but is to be considered as binding in honour on the underwriters; the assured however having permission to remove it from this policy should they so desire.

11. Full interest admitted; the policy being deemed sufficient proof of interest.

12. This insurance is without benefit of Salvage.

6/23/15.
6/1924.
10/6/27.

This insurance is against total loss and/or constructive total loss of vessel, and/or excess liability under the 4/4ths Collision Clause in Hull policies, as per clause 3 in form attached.

Including the conditions of the printed clauses attached.

No Salvage Charges and no claim under the sue and labour clause to attach hereto.

This policy is subject to the same warranties as are contained in the Hull Policies and one half of the additional premium payable thereon shall be payable on this Insurance.

65

44

44

at and after the Rate of Twenty five shillings per cent.

In WITNESS whereof, we the Assurers have subscribed our Names and Sums assured in

London, 9th January 191 8

Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

N.B.—Corn, Fish, Salt, Fruit, Flour and Seed are Warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are Warranted free from Average under Five Pounds per Cent.; and all other Goods, also the Ship and Freight, are Warranted free from Average under Three Pounds per Cent., unless general, or the Ship be stranded.

CANCELLED

This is to certify that we have duly stamped and signed Policies of Insurances in accordance with this pro-forma, as fulfilled in manuscript hereof.

WILLIS, FABER & CO. LTD

Exhibit 1

64

Exhibit 2, Annexed to Plaintiffs' Exhibit 1.

S. G

£ 27.740

(Nos 36,158. 52,230.)

Be it known that WILLIS, FABER & CO., Ltd.,
For account of whom it may concern.

as well in their own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make Assurance, and assure themselves and them, and every of them, to be insured, lost or not lost, at and from

Say for and during the space of Twelve Calendar Months commencing at Noon on the 1st day of May, 1918 and ending at Noon on the 1st day of May, 1919 beginning and ending with Greenwich Mean Time.

Insured with:—

£ 3975 Sea Co.
£ 415 Cornhill Co.
£ 1635 Ry. Exch. Assce.
£ 1220 Motor Un. Co.
£ 1220 United Brit. Co.
£ 610 Brit. Commwlth. Co.
£ 1635 Indemnity Co.
£ 1220 Northern Co.
£ 1910 Lloyd's U/rs.

The Underwriters on this policy hereby consent to give Willis Faber & Co., Ltd., an immediate right of set off in the event of claim.

3110 Coml. Union Co. 30/- %

15 day rets. on Lay up. Cancg.

25/-%	7d	10d
30/-%	10d	1/-

5296

upon any kind of Goods and Merchandises, and also upon the Body, Tackle, Apparel, Ordnance, Munitions, Artillery, Boat and other Furniture, of and in the good Ship or Vessel, called the "Almirante P."

@ 25/- %.

whereof is Master, under God, for this present Voyage,

or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called; beginning the Adventure upon the said Goods and Merchandises from the loading thereof aboard the said Ship as above

upon the said Ship, &c.,

and shall so continue and endure, during her Abode there, upon the said Ship, &c.; and further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandises whatsoever, shall be arrived at as above

upon the said Ship, &c., until she hath moored at Anchor Twenty-four Hours in good safety, and upon the Goods and Merchandises, until the same be there discharged and safely landed; and it shall be lawful for the said Ship, &c., in this Voyage, to proceed and sail to, and touch and stay at any Ports or Places whatsoever

without prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns the Assured, by Agreement between the Assured and the Assurers in this Policy, are and shall be valued at, say as

DISBURSEMENTS AND EXCESS LIABILITIES) Valued at total sum insured.

Touching the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes, and Peoples, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises, and Ship, &c., or any Part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises, and Ship, &c., or any Part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his Sum herein Assured. And it is expressly declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is hereby agreed by us, the Assurers, that this Writing or Policy of Assurance shall be of as much force and effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we the Assurers are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured at and after the Rate of as per margin per cent.

In WITNESS whereof, we the Assurers have subscribed our Names and Sums Insured in London, 29th June 1918

Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (other than by a hostile mine), and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

N.B.—Corn, Fish, Salt, Fruit, Flour and Seed are Warranted free from Average, unless general or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are Warranted free from Average under Five Pounds per

45

Exhibit 2, Annexed to Plaintiffs' Exhibit 1.

No. 105. Form B.

W. P. & Co., Ltd.
Vessel, (Steamer name Mast. Mar. Sail.)

Attaching to policy for £ _____ _____

per _____ *and forming part thereof.*

1. As employment may offer, in Port and at Sea, in Docks and Graving Docks, and on Ways, Gridirons, and Pontoons, at all times, in all places, and on all occasions, services, and trades whatsoever, and wheresoever, under steam or sail; with leave to sail with or without Pilots, TO TOW AND BE TOWED, and to assist Vessels and/or Craft in all situations and to any extent, and to go on trial trips. Including all risk incidental to Steam and Steam Navigation. With liberty to discharge, exchange, and take on board, Goods, Specie, Passengers and Stores, wherever the Vessel may call at or proceed to without being deemed a deviation, and with liberty to carry Goods, Live Cattle, &c., on deck or otherwise. Including all risks of docking, undocking, changing docks, or moving in harbour and going on or off gridiron or graving dock as often as may be done during the currency of this policy.

2. And it is expressly declared and agreed that no acts of the Insurer or Insured, in recovering, saving, or preserving the property insured shall be considered as a WAIVER or acceptance of abandonment.

3. This insurance is against the risk of total loss and/or constructive total loss of vessel, and is also to cover its proportion as below of all claims for general average and/or salvage charges and/or claims under the four-fourths running down clause (including costs) not collectible under policies on hull and machinery, etc., by reason of the difference between the valuation expressed in those policies (or any incidental reduced valuations arising from the deduction therefrom, in process of adjustment, of any particular average or other claim involved) and the value for purposes of contribution in general average and/or salvage, or for purposes of collision liability. The proportion of such claims payable by this policy shall be such proportion as the sum hereby insured bears either to the difference between the vessel's valuation as expressed in the policies on Hull and Machinery (or as above) and her valuation for purposes of contribution in general average and/or salvage or for purposes of collision liability—or to the total sum insured against excess liabilities if it exceeds such difference. To follow Hull Underwriters in the event of total or constructive or compromised total loss.

4. This insurance also specially to cover total loss or constructive total loss of Hull and Machinery through negligence of Master, Mariners, Engineers, or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the Machinery or Hull, or from explosions, riots, or other causes of whatsoever nature, arising either on shore or otherwise, howsoever, causing loss of the property hereby insured, provided such loss has not resulted from want of due diligence by the owners of the ship or any of them, or by the Manager.

5. In ascertaining whether the Vessel is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

6. Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

7. In the event of any breach of warranty or DEVIATION from the conditions of this policy, it is agreed to hold the assured covered; the premium to be arranged.

8. Should the vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge, or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

9. To Return 1 per cent. for every 15 days the Vessel may be in Port or in Dock, during such period the Vessel being at the risk of the Underwriters; and having leave to dock, undock, and change docks, &c.; and 10 per cent. for every 15 days of uncompleted time, if this insurance be cancelled, and arrival. A period in part fulfilling between two Insurances to be allowed for pro rata on dock, Underwriters on each Insurance agreeing to pay their pro rata proportion of the Return due. } on 25/- rate.

10. The above clauses and conditions are additional to those contained in the Annexed Policy, and so far as they are inconsistent therewith are to supersede the same.

Returns on 10d. each 15 days laid up.
30/- rate 1/- each 15 days - cancelled.

This slip is no part of the policy, and is not to be attached thereto, but is to be considered as binding in honour on the underwriters; the assured however having permission to remove it from this policy should they so desire

11. Full interest admitted; the policy being deemed sufficient proof of interest.

12. This insurance is without benefit of Salvage.

67

46

Exhibit 2, Annexed to Plaintiffs' Exhibit 1.

B. G.

£ _____

(No.)

Insured with:—

Be it known that WILLIS, FABER & CO., Ltd.
For account of whom it may concern.

as well in their own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make Insurance, and cause themselves and them, and every of them, to be insured, lost or not lost, at and from

say for and during the space of Twelve Calendar Months
commencing at Noon on the 1st. May, 1918
and ending at Noon on the 1st. May, 1919
beginning and ending with Greenwich Mean Time.

£ Brit. Dom. Co
£ Marchants Co,
£ London & Prov. Co.
£ World Co.
£ Lloyd's U/rs.

upon any kind of Goods and Merchandises, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillary, Boat and other Furniture, of and in the good Ship or Vessel, called the

The Underwriters on this Policy hereby consent to give Willis, Faber & Co., Ltd., an immediate right of set off in the event of claim.

whereof is Master, under God, for this present Voyage.

or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called; beginning the Adventure upon the said Goods and Merchandises from the loading thereof aboard the said Ship as above

upon the said Ship, &c.

and shall so continue and endure, during her Abode there, upon the said Ship, &c.; and further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandises whatsoever, shall be arrived at as above upon the said Ship, &c., until she hath moored at Anchor Twenty-four Hours in good safety, and upon the Goods and Merchandises, until the same be there discharged and safely landed; and it shall be lawful for the said Ship, &c., in this Voyage, to proceed and sail to, and touch and stay at any Ports or Places whatsoever

without prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns the Assured, by Agreement between the Assured and the Assurers in this Policy, are and shall be valued at, say as

FREIGHT as attached.

Touching the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes, and Peoples, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises, and Ship, &c., or any Part thereof; and in case of any Loss, or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises, and Ship, &c., or any Part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his sum herein Assured. And it is expressly declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much force and effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we the Assurers are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured at and after the Rate of

per cent.

Thirty two shillings and sixpence

In WITNESS whereof, we the Assurers have subscribed our Names and Sums assured in

London, 30th. June 1918

Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations, whether before or after declaration of war.

N.B.—Corn, Fish, Salt, Fruit, Flour and Seed are Warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are Warranted free from Average under Five Pounds per Cent.; And all other Goods, also the Ship and Freight, are Warranted free from Average under Three Pounds per Cent. unless general, or the Ship be stranded.

5296

as per margin

In WITNESS whereof, we the Assurers have subscribed our Names and Sum Insured at London, 29th June 1918

Warranted free of Capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

N.B.—Corn, Fish, Salt, Fruit, Flour and Seed are Warranted free from Average, unless general or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are Warranted free from Average under Five Pounds per Cent.; and all other Goods, also the Ship and Freight, are Warranted free from Average under Three Pounds per Cent., unless general, or the Ship be stranded.

This insurance is against total loss and/or constructive total loss of vessel.
Including Excess Liabilities as per clause attached.
Including the conditions of the printed clauses attached.

This is to certify that we hold duly stamped and signed Policies of Insurance in accordance with this pro-forma, as detailed in margin hereof.

WILLIS, FABER & CO. LTD

66

Exhibit 2 a.c.alld

Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

N.B.—Corn, Fish, Salt, Fruit, Flour and Seed are Warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are Warranted free from Average under Five Pounds per Cent.; and all other Goods, also the Ship and Freight, are Warranted free from Average under Three Pounds per Cent. unless general, or the Ship be stranded.

SUBJECT TO THE CONDITIONS OF THE PRINTED CLAUSES

to certify that we hold duly signed by undersigned Policy of Insurance in accordance with this proposal, as specified in terms known

WILLIS, FABER & CO. LTD

A. C. Allan

Exhibit 3

Exhibit 3, Annexed to Plaintiffs' Exhibit 1.

No. 189.

W. F. & Co., Ltd.
Tens. (Presents, &c.).

Attaching to policy for £ 5625

per Alexandre 5

As employment may offer, in Port and at Sea, in Docks and Graving Docks, and on Ways, Gridirons, and Pontoons, at all times, in all places, and on all occasions, services, and trades whatsoever, and wheresoever, under steam or sail; with leave to sail with or without Pilots, TO TOW AND BE TOWED, and to assist Vessels and/or Craft in all situations and to any extent, and to go on trial trips. Including all risk incidental to Steam and Steam Navigation. With liberty to discharge, exchange, and take on board, Goods, Specie, Passengers and Stores, wherever the Vessel may call at or proceed to without being deemed a deviation, and with liberty to carry Goods, live Cattle, &c., on deck or otherwise. Including all risk of craft and/or raft and/or boats to and from the Vessel. Including all risks of docking, undocking, changing docks, or moving in harbour and going on or off gridiron or graving dock as often as may be done during the currency of this policy.

And it is expressly declared and agreed that no acts of the Insurer or Insured, in recovering, saving, or preserving the property insured shall be considered as a WAIVER or acceptance of abandonment.

This insurance also specially to cover loss or damage through the negligence of Master, Mariners, Engineers or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the Machinery or Hull, or from explosions, riots, or other causes of whatsoever nature, arising either on shore or otherwise, howsoever, causing loss of or injury to the property hereby insured, provided such loss or damage has not resulted from want of due diligence by the owners of the ship or any of them, or by the Manager.

Warranted free from Average under Three per cent., unless general or the vessel be stranded, sunk, burnt, on fire, or in collision.

General Average and Salvage charges as per Foreign Custom, payable as per Foreign Statement and/or, if in accordance with the Contract of affreightment, per York-Antwerp Rules.

Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

Warranted free from claim consequent upon loss of time whether arising from a peril insured against or not.

In the event of any breach of warranty or DEVIATION from the conditions of this policy, it is agreed to hold the assured covered; the premium to be afterwards arranged.

Should the vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge, or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium, to her port of destination.

TO RETURN £ ? not per cent. for every 15 days the Vessel may be in port or in Dock, during such period the Vessel being at the risk of the Underwriters; and having leave to dock, undock, and change docks, &c.; and ?? not per cent. for every days of unexpired time, if this Insurance be cancelled, and arrival. A period in port falling between two Insurances to be allowed for pro rata on each, Underwriters on each Insurance agreeing to pay their pro rata proportion of the Return due.

It is agreed that these clauses shall be considered to supersede and annul any clauses to the same or similar effect, which may be printed in or attached to this policy, and for the purposes of construction these clauses shall be deemed of the nature of written additions to the policy.

This slip is not to be attached to the policy, and the assured has permission to detach it from the clauses above should the policy have to be produced in a Court of Law

Full interest admitted in the event of total loss and/or constructive total loss of Vessel; the policy being deemed sufficient proof of interest.

ON FREIGHT including advanced charges (in and/or over) chartered and/or otherwise, on board or not on board.

To attach and cover (whether waterborne or not) from the time the goods come into the possession of the assured on their wharves before loading and are appropriated to the vessel, and to continue after discharge while on their wharves until delivery to consignees or succeeding carriers.

The intent and purport of this policy is to cover and protect the assured the same as though separate policies were issued for each trip during the currency of same.

Attached to policy for £ 5625 per Alexandre s.s. 69

48

Exhibit 4, Annexed to Plaintiffs' Exhibit 1.

c.c.

$ 2500

(No. 56207)

[redacted], FABER & CO., Ltd.

[redacted] For account of whom it may concern.

as within their [redacted] the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make Assurance, and [redacted] themselves and each and every of them, to be Insured, lost or not lost, at and from

Say for and during the space of Twelve Calendar Months
[redacted] on the 1st day of May, 1918
and ending at Noon on the 1st day of May, 1919
beginning and ending with Greenwich Mean Time

London Assce.

upon any Kind of Goods and Merchandises, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of and in the good Ship or Vessel, called the

Almirante

whereof is Master, under God, for this present Voyage,
or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called; beginning the Adventure upon the said Goods and Merchandises from the loading thereof aboard the said Ship as above
upon the said Ship, &c.

and shall so continue and endure, during her Abode there.
upon the said Ship, &c.; and further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandises whatsoever, shall be arrived at as above
upon the said Ship, &c., until she hath moored at Anchor Twenty-four Hours in good safety, and upon the Goods and Merchandises, until the same be there discharged and safely landed; and it shall be lawful for the said Ship &c., in this Voyage, to proceed and sail to, and touch and stay at any Ports or Places whatsoever

without prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns the Assured, by Agreement between the Assured and the Assurers in this Policy, are and shall be valued at, say on

DISBURSEMENTS Valued at total sum insured.

Touching the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes, and Peoples, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises, and Ship, &c., or any Part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises, and Ship, &c., or any Part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his sum herein Assured. And it is expressly declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much force and effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And we the Assurers are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured at and after the Rate of

per cent.

Twenty five shillings

In WITNESS whereof, we the Assurers have subscribed our Names and Sums Assured.

London, 20th May June 1918

Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

N.B.—Corn, Fish, Salt, Fruit, Flour and Seed are Warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are Warranged free from Average under Five Pounds per Cent.; and all other Goods, also the Ship and Freight, are Warranted free from Average under Three Pounds per Cent unless general, or the Ship be stranded.

Exhibit 4, Annexed to Plaintiffs' Exhibit 1.

Attaching to policy for £ 60-0

and forming part thereof.

1. As employment may offer, in Port and at Sea, in Docks and Graving Docks, and on Ways, Gridirons, and Pontoons, at all times, in all places, and on all occasions, services, and trades whatsoever, and wheresoever, under steam or sail; with leave to sail with or without Pilots, TO TOW AND BE TOWED, and to assist Vessels and/or Craft in all situations and to any extent, and to go on trial trips. Including all risk incidental to Steam and Steam Navigation. With liberty to discharge, exchange, and take on board, Goods, Specie, Passengers and Stores, wherever the Vessel may call at or proceed to without being deemed a deviation, and with liberty to carry Goods, Live Cattle, &c., on deck or otherwise. Including all risks of docking, undocking, changing docks, or moving in harbour and going on or off gridirons or graving dock as often as may be done during the currency of this policy.

2. And it is expressly declared and agreed that no acts of the Insurer or Insured, in recovering, saving, or preserving the property insured shall be considered as a WAIVER or acceptance of abandonment.

3. This insurance is against the risk of total loss and/or constructive total loss of vessel, and is also to cover its proportion as below of all sums for general average and/or salvage and/or special charges and/or claims under the four-fourths running down clause (including costs) not collectible under policies on hull and machinery, etc., by reason of the difference between the valuation expressed in those policies (or any incidental reduced valuations arising from the deduction therefrom, in process of adjustment, of any particular average or other claim involved) and the value for purposes of contribution to general average and/or salvage and/or special charges and/or for purposes of collision liability. The proportion of such claims payable by this policy shall be such proportion as the sum hereby insured bears either to the difference between the vessel's valuation as expressed in the policies on Hull and Machinery (or as above) and her valuation for purposes of contribution to general average and/or salvage and/or special charges and/or for purposes of collision liability, or to the total sum insured against excess liabilities if it exceeds such difference. To follow Hull Underwriters in the event of total or constructive or compromised total loss.

4. This insurance also specially to cover total loss or constructive total loss of Hull and Machinery through negligence of Master, Mariners, Engineers, or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the Machinery or Hull, or from explosions, riots, or other causes of whatsoever nature, arising either on shore or otherwise, howsoever, causing loss of the property hereby insured, provided such loss has not resulted from want of due diligence by the owners of the ship or any of them, or by the Manager.

5. In ascertaining whether the Vessel is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

6. Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations, whether before or after declaration of war.

7. In the event of any breach of warranty or DEVIATION from the conditions of this policy, it is agreed to hold the assured covered; the premium to be arranged.

8. Should the vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge, or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium, to her port of destination.

9. To RETURN ½ per cent. for every 15 days the Vessel may be in Port or in Dock, during such period the Vessel being at the risk of the Underwriters; and having leave to dock, undock, and change docks, &c.; and 10 - per cent. for every 15 days of unexpired time, if this insurance be cancelled, and arrival. A period in part falling between two Insurances to be allowed for pro rata on each, Underwriters on each Insurance agreeing to pay their pro rata proportion of the Return due.

10. The above clauses and conditions are additional to those contained in the Annexed Policy, and so far as they are inconsistent therewith are to supersede the same.

This slip is no part of the policy, and is not to be attached thereto, but is to be considered as binding in honour on the underwriters; the assured however having permission to remove it from this policy should they so desire.

11. Full interest admitted; the policy being deemed sufficient proof of interest.

12. This insurance is without benefit of Salvage.

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50

[fol. 72] EXHIBIT 5, ANNEXED TO PLAINTIFFS' EXHIBIT 1

(Copy)

Marine Department,

Ætna Insurance Company,

Hartford, Connecticut

Talbot, Bird & Co., Inc.,

General Agents,

63-65 Beaver Street.

New York, October 28th, 1918.

Messrs. Johnson and Higgins, Adjusting Department, 49 Wall Street, New York City, N. Y.

S. S. "Almirante"

GENTLEMEN:

We are in receipt of your favors of the 25th inst., tendering abandonment of this vessel to the underwriters represented by us, for which we thank you. Beg to state that we hereby decline to accept same, as is customary.

Yours for Unconditional Surrender, Ætna Insurance Company, Franklin Fire Insurance Company, National Insurance Company of Copenhagen, Talbot, Bird & Co., Inc., Gen. Ag'ts, (Sgd.) J. S. Gilbertson, Director.

JSG:w.

[fol. 73] PLAINTIFFS' EXHIBIT 2

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

L 57-273

BOSTON INSURANCE COMPANY, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant

The following facts are hereby stipulated for the purpose of trial, subject to any objection which may be made to the

admission into evidence of any of said facts upon the trial on any ground other than the ground that the facts are not sufficiently proved:

1. That at all the times mentioned in the complaint, plaintiff was, and now is, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, and a citizen and inhabitant of said State, having an office and place of business at No. 116 John Street, County, Southern District, and State of New York.

2. That plaintiff's policy No. 75,285 in the possession of defendant, is the policy referred to in paragraph "3" of the complaint, and may be admitted in evidence.

3. That the defendant procured other policies of insur- [fol. 74] ance on the S. S. "Almirante" in the amount of £65,105, upon the terms and conditions set forth in Exhibits, "1", "2", "3" and "4" annexed hereto.

4. That the letter dated October 25, 1918, from Johnson & Higgins to plaintiff, copy of which is attached to the answer as Schedule "A", was received by the plaintiff; that no efforts were ever made to salve the "Almirante"; and on or about December 16, 1918, plaintiff paid to Johnson & Higgins for defendant, a total loss under its policy No. 75,285. Annexed hereto are copies of the payment order signed by defendant marked Exhibit "5" and receipt signed by Johnson & Higgins marked Exhibit "6".

5. That the defendant also collected £65,105 from the underwriters who issued the policies referred to in paragraph "3" hereof.

6. That the S. S. "Hisko", which collided with the S. S. "Almirante", was owned by the United States of America.

7. That the plaintiff and defendant and the other hull underwriters who had issued policies similar to plaintiff's policy No. 75,285, jointly retained Kirlin, Woolsey & Hickox and its successor firms Kirlin, Woolsey, Campbell, Hickox & Keating, and Kirlin, Campbell, Hickox, Keating & McGrann, to prosecute the claim for damages occasioned by the loss of the S. S. "Almirante" against the United States of America.

8. That said attorneys, pursuant to their retainer and pursuant to instructions from the defendant and plaintiff [fol. 75] and other hull underwriters, procured the passage of a Special Act authorizing suit against the United States of America.

9. That the copy of said Special Act attached to the answer as Schedule "B" is a correct copy of said Act; and that no further proof of said Act shall be necessary.

10. That thereafter said attorneys, pursuant to their retainer by the defendant and plaintiff and other hull underwriters, and by their express instructions, filed suit in the name of the owner of the S. S. "Almirante" in the United States District Court for the Southern District of New York against the United States as owner of the S. S. "Hisko", under the Special Act of Congress above referred to, and recovered the sum of $1,761,693.02 as the actual value of the S. S. "Almirante" and her equipment at the time of her loss.

11. That payment of this judgment was received by said attorneys on July 26, 1932.

12. That, in accordance with the provisions of the Act of Congress under which the suit was brought, no interest was allowed on the recovery; and no interest was, in fact, recovered.

13. That the reasonable and necessary legal and other expenses in respect of said litigation, after deduction of taxable costs recovered, amounted to $300,024.33.

14. That on September 27, 1932 and November 25, 1932, a portion of said recovery was paid over by said attorneys to Messrs. Johnson & Higgins for distribution to the various [fol. 76] underwriters, including the plaintiff; and the balance of said net recovery was paid over by said attorneys to the defendant herein.

15. Thereafter Johnson & Higgins, out of the funds in their hands, paid to the plaintiff the amounts alleged in paragraph "Seventh" of the complaint.

In WITNESS whereof, we the Assurers have subscribed our Names and Sums Insured

London, 20th June 1918

Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

N.B.—Corn, Fish, Salt, Fruit, Flour and Seed are Warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are Warranted free from Average under Five Pounds per Cent.; and all other Goods, also the Ship and Freight, are Warranted free from Average under Three Pounds per Cent. unless general, or the Ship be stranded.

This insurance is against total loss and/or constructive total loss of vessel and/or excess liability under the 4/4ths Collision Clause in Hull policies, as per clause 3 in form attached.
Including the conditions of the printed clauses attached.

WILLIS. FABER & Co. Ltd

Exhibit 4. A. C. Allan 70

16. That the sum of $14,037.71, which was paid to the plaintiff as alleged in paragraph "Seventh" of the complaint, was arrived at as follows:

Plaintiff was credited with the amount of its payment to the defendant	$15,815.00
Less plaintiff's proportion, 15,815/632610ths, of $500.00 received on the sale of lifeboats recovered	12.50
	$15,802.50
Add bank interest earned on $15,802.50 from July 26, 1932, the date on which the judgment was paid by the United States, until the plaintiff received the payments alleged in paragraph "Seventh" of the complaint	33.32
	$15,835.82
Deducted by defendant on account of legal fees and other expenses set forth in the recovery statement hereinafter referred to	1,798.11
Paid to plaintiff	$14,037.71

[fol. 77] 17. The recovery statement issued by Johnson & Higgins under date of November 22, 1932, or any part thereof, may be offered in evidence by either party as prima facie evidence of any of the facts stated therein,—it being understood, however, that this stipulation is not to be construed as an admission by the plaintiff that the division and apportionment of the recovery as shown therein is proper.

18. As evidence of the course of the proceedings which led to the recovery here involved, either party may refer to any of the court decisions which were rendered in those proceedings.

Dated, New York, September 23, 1936.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiff. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant.

Exhibits 1, 2, 3 and 4, annexed to Plaintiffs' Exhibit #2 are the same as 1, 2, 3 and 4, annexed to Plaintiffs' Exhibit

#1 photoprinted at pages 65-71 of this record and are therefore omitted pursuant to stipulation.

[fol. 78] EXHIBIT 5, ANNEXED TO PLAINTIFFS' EXHIBIT 2

Sep. 11, 1918.

To Boston Ins. Co.:

Please pay to Messrs. Johnson & Higgins, the amount shown to be due on your policy on steamer "Almirante" for $15815 a/c accident Total Loss Sept. 6, 1918.

United Fruit Company, (Signature illegible), Assistant Treasurer.

EXHIBIT 6, ANNEXED TO PLAINTIFFS' EXHIBIT 2

Duplicate

$15815#. New York, Dec. 16, 1918.

Received of the Boston Insurance Company, Fifteen thousand eight hundred fifteen # Dollars, In full for a/c of Hull S/S. "Almirante" from N. Y. to Havana insured under policy No. 75285.

For Johnson & Higgins, G. C. Bjur.

896524.

(On side) No. 5172 Assured United Fruit Co.

[fol. 79] PLAINTIFFS' EXHIBIT 3

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

BOSTON INSURANCE COMPANY, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant,

L 57-273

The following facts are hereby stipulated for the purpose of trial, subject to any objection which may be made to the admission into evidence of any of such facts upon the trial

on any ground other than the ground that the facts are not sufficiently proved:

1. Exhibit 7, annexed hereto, is a photostatic copy of plaintiff's printed form of subrogation receipt which plaintiff sent to Johnson & Higgins, for execution by the defendant, together with a check in payment of a total loss under its policy. Johnson & Higgins added the handwriting insertion, "to the extent of $15815.00" shown on the receipt and then had the receipt signed by the defendant and returned to the plaintiff. Plaintiff retained said receipt as executed by the defendant without complaint or protest.

2. That the plaintiff was not a party to the agreement mentioned in the last paragraph of page 4 of the statement of recovery.

[fol. 80] 3. That all English underwriters paid a total loss to brokers in London in Sterling. These funds were transmitted through brokers to the owner. The owner received these funds at the rate of exchange of $4.75¾.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiff. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant.

EXHIBIT 7, ANNEXED TO PLAINTIFFS' EXHIBIT 3

$15815.— B2465-8.

Subrogation Receipt

Received of the Boston Insurance Company, Boston, Massachusetts, Fifteen thousand eight hundred fifteen Dollars, in full payment, release and discharge of all claims or demands against the said Company, arising from or connected with total loss to Hull S/S. "Almirante" S/S "Hisco" which loss or damage arose or occurred on or about the — day of ——, 19—; and in full payment, release and discharge of all claims or demands against the said Company under the certain Policy of insurance made by said Company and numbered 75285, arising from or connected with any such loss or damage; and for and in consideration of such payment the undersigned hereby assigns [fol. 81] and transfers to the said Company all claims and

demands against any person, persons, vessels, or property, arising from or connected with such loss or damage, and the said Company is subrogated to all rights of the undersigned with respect to said loss or damage.

We do hereby sell, assign and transfer to said Boston Insurance Company all our rights and interest in the above to the extent of $15815.00 to have and to hold the same to the said Company its successors and assigns to their own use forever.

Dated this 28 day of Jan. 1919, at New York.

United Fruit Company, by John W. Damon, Treasurer.

5172.
896254.

[fol. 82] PLAINTIFFS' EXHIBIT 4

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

L 57-272

UNION MARINE & GENERAL INSURANCE COMPANY, LIMITED, Formerly Union Marine Insurance Company, Limited, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant

The following facts are hereby stipulated for the purpose of trial, subject to any objection which may be made to the admission into evidence of any of said facts upon the trial on any ground other than the ground that the facts are not sufficiently proved:

1. That at all the times mentioned in the complaint, plaintiff was, and now is, a corporation organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Northern Ireland, having an office and place of business at No. 116 John Street, County, Southern District, and State of New York.

2. That plaintiff's policy No. 351 in the possession of defendant, is the policy referred to in paragraph "3" of the complaint, and may be admitted in evidence.

[fol. 83] 3. That the defendant procured other policies of insurance on the S.S. "Almirante" in the amount of

£65,105, upon the terms and conditions set forth in Exhibits "1", "2", "3" and "4" annexed hereto.

4. That the letter dated October 25, 1918, from Johnson & Higgins to plaintiff, copy of which is attached to the answer as Schedule "A", was received by the plaintiff; that on or about October 26, 1918, plaintiff wrote to Johnson & Higgins the letter, copy of which is attached hereto marked Exhibit "5"; that no efforts were ever made to salve the "Almirante"; and on or about December 5, 1918, plaintiff paid to defendant a total loss under its policy No. 351.

5. That the defendant also collected £65,105 from the underwriters who issued the policies referred to in paragraph "3" hereof.

6. That the S.S. "Hisko", which collided with the S.S. "Almirante", was owned by the United States of America.

7. That the plaintiff and defendant and the other hull underwriters who had issued policies similar to plaintiff's policy No. 351, jointly retained Kirlin, Woolsey & Hickox and its successor firms Kirlin, Woolsey, Campbell, Hickox & Keating, and Kirlin, Campbell, Hickox, Keating & McGrann, to prosecute the claim for damages occasioned by the loss of the S.S. "Almirante" against the United States of America.

8. That said attorneys, pursuant to their retainer and pursuant to instructions from the defendant and plaintiff [fol. 84] and other hull underwriters, procured the passage of a Special Act authorizing suit against the United States of America.

9. That the copy of said Special Act attached to the answer as Schedule "B" is a correct copy of said Act; and that no further proof of said Act shall be necessary.

10. That thereafter said attorneys, pursuant to their retainer by the defendant and plaintiff and other hull underwriters, and by their express instructions, filed suit in the name of the owner of the S.S. "Almirante" in the United States District Court for the Southern District of New York against the United States as owner of the S.S. "Hisko", under the Special Act of Congress above referred to, and recovered the sum of $1,761,693.02 as the

actual value of the S.S. "Almirante" and her equipment at the time of her loss.

11. That payment of this judgment was received by said attorneys on July 26, 1932.

12. That, in accordance with the provisions of the Act of Congress under which the suit was brought, no interest was allowed on the recovery; and no interest was, in fact, recovered.

13. That the reasonable and necessary legal and other expenses in respect of said litigation, after deduction of taxable costs recovered, amounted to $300,024.33.

14. That on September 27, 1932 and November 25, 1932, a portion of said recovery was paid over by said attorneys to Messrs. Johnson & Higgins for distribution to the vari-
[fol. 85] ous underwriters, including the plaintiff; and the balance of said net recovery was paid over by said attorneys to the defendant herein.

15. Thereafter Johnson & Higgins, out of the funds in their hands, paid to the plaintiff the amounts alleged in paragraph "Seventh" of the complaint.

16. That the sum of $5,615.08, which was paid to the plaintiff as alleged in paragraph "Seventh" of the complaint, was arrived at as follows:

Plaintiff was credited with the amount of its payment to the defendant	$6,326.00
Less plaintiff's proportion, 6326/632610ths, of $500.00 received on the sale of lifeboats recovered	5.00
	$6,321.00
Add bank interest earned on $6,321. from July 26, 1932, the date on which the judgment was paid by the United States, until the plaintiff received the payments alleged in paragraph "Seventh" of the complaint	13.33
	$6,334.33
Deducted by defendant on account of legal fees and other expenses set forth in the recovery statement hereinafter referred to	719.25
Paid to plaintiff	$5,615.08

[fol. 86] 17. The recovery statement issued by Johnson & Higgins under date of November 22, 1932, or any part thereof, may be offered in evidence by either party as prima facie evidence of any of the facts stated therein—it being understood, however, that this stipulation is not to be construed as an admission by the plaintiff that the division and apportionment of the recovery as shown therein is proper.

18. As evidence of the course of the proceedings which led to the recovery here involved, either party may refer to any of the court decisions which were rendered in those proceedings.

Dated, New York, June 10, 1936.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiff. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant.

Exhibits 1, 2, 3 and 4 annexed to Plaintiffs' Exhibit #4 are the same as Exhibits 1, 2, 3 and 4 annexed to Plaintiffs' Exhibit #1 photoprinted at pages 65-71 of this record and are therefore omitted pursuant to stipulation.

[fol. 87] EXHIBIT 5, ANNEXED TO PLAINTIFFS' EXHIBIT 4

(Copy)

The Union Marine Insurance Co., Limited of Liverpool

UM.

United States Branch,
27 William Street
New York, October 26, 1918.

In reply please quote FHC/CM. Your Ref. JPN-KM.

Messrs. Johnson & Higgins, 49-51 Wall Street, New York City.

DEAR SIRS:

"Almirante" (S)

We beg to acknowledge receipt of your favor of yesterday's date and in reply regret that we must decline to accept the abandonment tendered therein.

Yours faithfully, (Sd.) Frank H. Canty, Assistant Manager.

[fol. 88] PLAINTIFFS' EXHIBIT 5

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

L 57-272

UNION MARINE & GENERAL INSURANCE COMPANY, LIMITED, Formerly Union Marine Insurance Company, Limited, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant

The following facts are hereby stipulated for the purpose of trial, subject to any objection which may be made to the admission into evidence of any of such facts upon the trial on any ground other than the ground that the facts are not sufficiently proved:

1. Exhibit 6, annexed hereto, is a photostatic copy of plaintiff's printed form of subrogation receipt which plaintiff sent to Johnson & Higgins, for execution by the defendant, together with a check in payment of a total loss under its policy. Johnson & Higgins added the handwriting insertions shown on the receipt and then had the receipt signed by the defendant and returned to the plaintiff. Plaintiff retained said receipt as executed by the defendant without complaint or protest.

2. That the plaintiff was not a party to the agreement mentioned in the last paragraph of page 4 of the statement of recovery.

[fol. 89] 3. That all English underwriters paid a total loss to brokers in London in Sterling. These funds were transmitted through brokers to the owner. The owner received these funds at the rate of exchange of $4.75¾.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiff. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant.

EXHIBIT 6, ANNEXED TO PLAINTIFFS' EXHIBIT 5

To the Union Marine Insurance Company, Limited, New York.

DEAR SIRS:

In consideration of your paying our claim for Total loss on Hull of "Almirante" (S) and insured under Policy #351 we hereby assign to you all of our rights and claims to any sum or sums of money to the extent of but not exceeding $6326.— which may be payable to, or recoverable by us, or in our names, in respect of the under-mentioned interest, whether on account of Salvage therefrom or on any other account whatever, and we authorize you to use our names in any action or proceedings you may be advised to bring with respect to any of the above mentioned matters and we undertake ourselves to do or concur in any matters or proceedings which you may deem expedient or [fol. 90] necessary in any such action or proceedings and generally to assist therein by all means in our power. We further undertake if called upon by you so to do ourselves to undertake any such action or proceedings as you may direct on your behalf, it being understood that you are to indemnify us against any costs, charges or expenses to be incurred in respect of any proceedings to the extent of but not exceeding $6326— taken by virtue of this agreement.

Signed in duplicate this 28th day of January 1919.

United Fruit Company, by Jchn W. Damon, Treasurer.

Description of Interest Above Referred to: above steamer sunk in collision September 6th, 1918.

Our File #12183.

AMERICAN HULL POLICY
1916 Form

Plaintiffs' Exhibit 6.

Original. No. 6315

Aetna Insurance Company

HARTFORD, CONNECTICUT

Original and duplicate policies issued, one of which being accomplished, the other to stand null and void.

For Account of Whom it may concern

Loss, if any, payable to As per form attached.

Do make insurance and cause United Fruit Company and/or Elders & Fyffes Ltd. et al

To be insured, lost or not lost, to the amount of Four Hundred Eighty-five Thousand two hundred fifteen----- Dollars

At and from the 1st day of May , 1918.

Until the 1st day of May , 1919.

(Beginning and ending with Greenwich mean time).. Noon.

Warranted as follows. Ori-

Attached to Policy No. [illegible]

Upon the body, tackle, apparel, stores, ordnance, munitions, artillery, boats and other furniture, boilers and machinery of the Steamship called the

As per form attached. S. S.

or by whatsoever name or names the said Vessel is or shall be named or called; beginning the adventure upon the said Vessel, &c., as above, and so shall continue and endure during the period aforesaid, as employment may offer, in port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades whatsoever and wheresoever, under steam or sail; with leave to sail with or without pilots, to tow and be towed, and to assist vessels and/or craft in all situations and to any extent, and to go on trial trips. With liberty to discharge, exchange and take on board goods, specie, passengers, and stores, wherever the Vessel may call at or proceed to, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free of any claim in respect of deck cargo. Including all risks of docking, undocking, changing docks, or moving in harbour and going on or off gridiron or graving docks as often as may be done during the currency of this Policy.

The said Ship, &c., for so much as concerns the Assured, by agreement between the Assured and Assurers in this Policy, are and shall be valued at as follows:

Hull, tackle, apparel, furniture, &c., $

Boilers, machinery, &c., and everything connected therewith $

$ As per form attached.

Donkey boilers, winches, cranes, windlasses, steering gear, and electric light apparatus, shall be deemed to be part of the hull and not part of the machinery. Refrigerating machinery and insulation appertaining thereto not covered unless expressly included in this Policy, or unless the property of the owners of the Vessel.

The Insurers to be paid in consideration of this insurance Fourteen thousand five hundred fifty-six 45/100-- Dollars,

being at the rate of 3 per cent.

[illegible] managers on Disbursements, Commissions or similar interests P. P. I. or F. I. A. shall not exceed 125% of the insured valuation of the vessel, but the assured may in addition thereto effect P. P. I. or F. I. A. insurance on any of the following interests:

Premiums (reducing or not reducing monthly) to any amount actually at risk, and Freight and/or Chartered Freight and/or Anticipated Freight and/or Earnings and/or Hire or Profits on Time Charter and/or Charter for series of voyages for any amount not exceeding (in the aggregate 20% of the insured valuation of the vessel; and if the actual amount at risk on any or all of such interests shall exceed such 20% of the insured valuation of the vessel, the assured and/or their managers may, without prejudice to this warranty, insure without risk the excess of such interests reducing as earned.

Provided always that a breach of this warranty shall not afford underwriters any defence to a claim by mortgagees or other third parties who may have accepted this Policy without notice of such breach of warranty, nor shall it restrict the right of the assured and their managers to insure in addition General Average and/or Salvage [illegible]

Touching the Adventures and Perils which we, the said Assurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and Peoples, of what nation, condition or quality soever, Barratry of the Master and Mariners, Explosions, Blots, or other causes of whatsoever nature arising either on shore or otherwise, causing Loss of or injury to the Property hereby insured, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Ship, &c., or any part thereof. And in case of any Loss or Misfortune, it shall be lawful for the Assured, their Factors, Servants and Assigns, to sue, labour and travel for, in and about the Defence, Safeguard and Recovery of the said Ship, &c., or any part thereof, without prejudice to this Insurance, to the Charges whereof the Assurers will contribute according to the Rate and Quantity of the sum herein assured. And it is expressly declared and agreed that no act of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

This Insurance also specially to cover (subject to the less if average warranty) loss of, or damage to hull or machinery, through the negligence of Master, Charterers, Mariners, Engineers, or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the Owners of the Ship, or any of them, or by the Manager. Masters, Mates, Engineers, Pilots, or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the steamer.

And it is [illegible]

two of such three Arbitrators, appointed as above to be final and binding. Provided always that this clause shall in no case extend to any sum which the Assured or Charterers may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or engagements of the Insured Vessel, or for loss of life, or personal injury. And provided also that in the event of any claim being made by Charterers under this clause they shall not be entitled to recover in respect of any liability to which the Owners of the Ship, if interested in this Policy at the time of the Collision in question, would not be subject, nor to a greater extent than the Shipowners would be entitled in such event to recover.

And it is further agreed that in the event of salvage, towage, or other assistance being rendered to the Vessel hereby insured by any Vessel belonging in part or in whole to the same Owners or Charterers, the value of such services (without regard to the common ownership of the Vessels) shall be ascertained by arbitration in the manner above provided for under the Collision Clause, and the amount so awarded so far as applicable to the interest hereby insured shall constitute a charge under this Policy.

General Average and salvage charges payable in accordance with York-Antwerp Rules, 1890, if so provided for in the contract of affreightment. As regards matters not provided for in the York-Antwerp Rules, 1890 (when the contract of affreightment provides for such rules), and also when the contract of affreightment does not provide for such rules, General Average and salvage charges shall be payable in accordance with the laws and usages of the United States. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance with same.

No claim shall be allowed in respect of scraping or painting the Vessel's bottom except as provided in Rule of Practice VIII, of the Association of Average Adjusters of the United States.

Grounding in the Panama Canal or in the Suez Canal or in the Manchester Ship Canal or its connections, or in the River Mersey above Rock Ferry Slip, or in the River Plate (above Buenos Aires) or its tributaries, or in the Danube, Demerara, or Bilbao River or on the Yenikale or Bilbao Bar, shall not be deemed a stranding.

Average payable on each valuation separately or on the whole, without deduction of thirds, new for old, whether the average be particular or general.

In no case shall Underwriters be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this Policy.

In ascertaining whether the Vessel is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

In the event of total or constructive total loss, no claim to be made by the Underwriters for freight, whether notice of abandonment has been given or not.

Notwithstanding anything herein contained to the contrary this Policy is warranted free from particular average under 3 per cent., or unless amounting to $4,355, but nevertheless when the Vessel shall have been stranded, sunk, on fire, or in collision with any other Ship or Vessel, Underwriters shall pay the damage occasioned thereby, and the expense of sighting the bottom after stranding shall be paid, if reasonably incurred, even if no damage be found.

The warranty and conditions as to average under 3 per cent. to be applicable to each voyage as if separately insured, and a voyage shall be deemed to commence at one of the following periods to be selected by the Assured when making up the claim, viz.: at any time at which the Vessel (1) begins to load cargo or (2) sails in ballast to a loading port. Such voyage shall be deemed to continue during the ensuing period until either she has made one outward and one homeward passage (including an intermediate ballast passage, if made) or has carried and discharged two cargoes, whichever may first happen, and further, in either case, until she begins to load a subsequent cargo or sails in ballast for a loading port. When the Vessel sails in ballast to effect damage repair such sailing shall not be deemed to be a sailing for a loading port although she loads at the repairing port. In calculating the 3 per cent. above referred to, particular average occurring outside the period covered by this Policy may be added to particular average occurring within such period provided it occur upon the same voyage (as above defined), but only that portion of the claim arising within such period shall be recoverable hereon. The commencement of a voyage shall not be so fixed as to overlap another voyage on which a claim is made on this or the preceding Policy.

Should the Vessel at the expiration of this Policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

Should the Vessel be sold or transferred to other ownership, then, unless the Underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the Vessel has cargo on board and has already sailed from her loading port, or is at sea in ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A pro rata daily return of premium shall be made.

It is warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted) and also from [illegible]

...ge under this ...ticular Average ...to ascertain ...

...ys after attachment this Policy may be canceled by the Assurers upon five days written notice being given the Assured. ...be had hereunder, unless the expense of recovering and repairing the vessel shall exceed the insured value.

Plaintiffs' Exhibit 6.

UNITED FRUIT COMPANY and/or ELDERS & FYFFES, LTD.

and/or the owning companies of the below mentioned vessels, its, or their successors and assigns.

FOR ACCOUNT OF WHOM IT MAY CONCERN.

LOSS, IF ANY, PAYABLE TO THE UNITED FRUIT COMPANY OR THEIR ORDER.

are by this instrument insured on the Body, Tackle and Apparel, Ordnance, Munitions, Artillery, Boats and other Furniture, Machinery, Refrigerating Machinery and Insulation, if any, Boilers, Fuel, Stores and Provisions and anything connected therewith of and in the Steamships named below, or by whatsoever other name or names the said steamship is or shall be called, lost or not lost, for and *during the space of twelve calendar months.*

AT AND FROM the 1st day of May, 1918.
UNTIL the 1st day of May, 1919.
} beginning and ending with noon Greenwich mean time.

At employment may other, in port and at sea, in docks and in or on dry docks, on marine railways, gridirons and pontoons, at all times, in all places and on all occasions, services and ports whatsoever and whensoever, using steam or sail; with leave to sail with or without pilots, TO TOW AND TO BE TOWED, and to assist vessels and/or craft in all situations and to any extent; to render salvage services, and to go into dock. With liberty to tranship, lighter, warp, and to take on board cargo, specie, passengers and stores, wherever the vessel may call at or proceed to, without being deemed a deviation, and with liberty to carry goods, live stock, etc., on deck or otherwise and liable for consequences to pollution of same if under cover. With leave to dock, undock, change docks as often as may be required, and to go in or on, and out of or off dry docks and on or off marine railways and/or gridirons and/or pontoons and/or to adjust compasses, and including all risks of every kind incidental to these operations.

THIS INSURANCE TO ATTACH AND COVER UPON THE STEAMERS NAMED AND FOR THE AMOUNT DESIGNATED UPON EACH IN THE FOLLOWING SCHEDULE AND FOR SO MUCH AS CONCERNS THE ASSURED, BY AGREEMENT BETWEEN THE ASSURED AND ASSURERS IN THIS POLICY EACH OF SAID STEAMERS SHALL BE VALUED AS SHOWN BELOW:

AMOUNT INSURED HEREUNDER	Vessel	Value	AMOUNT INSURED HEREUNDER	Vessel	Value
$30,555	Pastores	$1,018,500	Forward		
30,555	Tenadores	1,018,500	$14,234	San Jose	$474,450
31,555	Calamares	1,018,500	14,234	Esparta	474,450
	Heredia	633,610	14,234	Limon	474,450
	Parismina	633,610	12,652	Sarramacca	421,749
	Gortago	633,610	12,652	Coppename	421,749
18,978	Tivives	633,610	12,652	Suriname	421,749
18,978	Carrillo	633,610	15,015	Manzanares	587,170
18,978	Sixaola	633,610	15,024	Tortuguero	500,810
18,978	Turriabla	633,610	14,234	Reventazon	474,450
18,978	Abangarez	633,610	14,234	Barranca	474,450
18,978	Zacapa	633,610	13,048	Pacuare	434,925
18,978	Metapan	633,610	12,652	Matina	421,749
18,978	Atenas	633,610	2,910	Tacoronte	97,000
18,978	Almirante	633,610	1,746	Taoro	58,200
18,978	Santa Marta	633,610	1,746	Guanche	58,200
16,005	San Mateo	533,500	698	Aquila de Oro	23,280
15,000	Levisa	500,000			
			$480,210		

Touching the adventures and perils which we, the said assurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and Peoples, of what nation, condition or quality soever, Barratry of the Master and Mariners, and all other perils, losses and misfortunes that have or shall come to the hurt, detriment or damage of the said ships, etc., or any part thereof. And in case of any loss or misfortune it shall be lawful for the assured, their factors, servants and assigns, to sue, labor and travel for, in, and about the defense, safeguard and recovery of the said ship, etc., or any part thereof, without prejudice to this insurance to the charges whereof the said Insurance Company shall contribute according to the Rate and Quantity of the sum herein assured. And it is expressly declared and agreed that no acts of the assurer or insured in recovering, saving, or preserving the property insured shall be considered a waiver, or acceptance of abandonment; having been paid the consideration for this Insurance by the Assured or their Assigns at and after the rate of 3 per cent.

This Insurance also specially to cover, subject to the "Excess of $500 clause below" cost of repairs, and/or loss of or damage to Hull or Machinery through the negligence of Master, Mariners, Engineers or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the Machinery or Hull, or from explosions, risks, or other causes of whatsoever nature, arising either ex shore or otherwise, howsoever, causing loss of or injury to the property hereby insured, provided such loss or damage has not resulted from want of due diligence by the owners of the ship, or any of them, or by the Manager, and to cover all risks incidental to steam navigation, or in or on dry docks, and on marine railways, gridirons and pontoons.

Anything herein to the contrary notwithstanding this insurance is warranted free from all claims of whatsoever nature, including claims under the collision clause—other than Total Loss, and/or Constructive Total Loss, which shall be paid in full,—unless the aggregate of such claims, unreduced by any recoveries from other interests and/or parties, arising out of each separate accident exceeds $500 or $2,425, in which case this insurance shall be liable only for the amount by which such aggregate exceeds ($500 or $2,425. For the purpose of this insurance each accident shall be treated separately, but it is agreed that a sequence of damages arising directly or indirectly from the same peril shall be treated as one accident.

In case of any claim for average, the repairs to be paid without deduction of one-third, whether the average be particular or general.

In the event of this policy beginning or ending while the vessel is in course of a voyage, the underwriters agree to pay their proportion of loss or damage sustained while the policy is in force, provided the loss or damage sustained on the entire voyage would have been recoverable if the policy had covered such voyage in its entirety.

General Average and Salvage Charges payable in accordance with Bill of Lading conditions, and/or as per foreign custom, according to foreign statement, and/or York-Antwerp Rules, if required; and in the event of Salvage, towage, or other assistance being rendered to the vessel hereby insured by any vessel belonging in part or in whole to the same owners, it is hereby agreed that the value of such services (without regard to the common ownership of the vessels) shall be ascertained by Arbitration in the manner hereinafter provided for under the "Collision Clause," and the amount so awarded, as far as applicable to the interest hereby insured, shall constitute a charge under this Policy.

Warranted free from Capture, Seizure, and Detention, and the consequences of any attempt thereat, and all other consequences of hostilities (Piracy and Barratry excepted).

Held covered in the event of any breach of warranty, or deviation from the conditions of this Policy, at an equitable premium to be arranged, notice to be given on receipt of advices.

Privileged to comply with all Governmental and/or Naval instructions as to routes, ports of call and stoppages without prejudice to this insurance.

To RETURN 6 2/3c. net per cent. for every 15 consecutive days the vessel may be in Port or in Dock, during such period the vessel, being at the risk of the Underwriters, and having leave to dock, undock, and change docks, etc., and 10 2/3c. net per cent. for every 15 days of unexpired time, if this Insurance be cancelled, and arrival. A period in port falling between two insurances to be allowed for pro rata on each, Underwriters on each insurance agreeing to pay their pro rata proportion of such return.

It is also agreed that any change of interest in the vessel hereby insured shall not affect the validity of this policy.

In the event of total loss or constructive total loss, no claim to be made by the Underwriters for freight, whether notice of abandonment has been given or not.

In ascertaining whether the Vessel is a constructive total loss the insured values shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

Should the vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge or of call, she shall be held covered until safely arrived at port of destination or until last at a pro rata daily premium if so desired by the insured.

COLLISION CLAUSE.

And it is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel, and the assured and/or charterers shall in consequence thereof become liable to pay and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the ship hereby insured, we, the assurers, will pay the assured and/or charterers such proportion of such sum or sums so paid as our subscriptions hereto bear to the value of the ship hereby insured. And in cases where the liability of the ship has been contested, with the consent in writing of a majority of the underwriters on the hull and/or machinery (in amount), we will also pay a like proportion of the costs thereby incurred or paid; but when both vessels are to blame, then unless the liability of the owners and/or charterers of one or both of such vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of CROSS LIABILITIES as if the owners and/or Charterers of each vessel had been compelled to pay to the owners and/or charterers of the other of such vessels such one-half or other proportion of the latters damages as may have been properly allowed in ascertaining the balance or sum payable by or to the assured and/or charterers in consequence of such collision.

And it is further agreed that the principles involved in this clause shall apply to the case where both vessels are the property, in part or in whole, of the same owners and/or charterers, all questions of responsibility and amount of liability as between the two ships, being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement to the decision of Arbitrators, one to be appointed by the managing owners and/or charterers of both vessels, and one to be appointed by the majority in amount of Underwriters interested in each vessel; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference. The terms of the Arbitration Act of 1889 to apply to such reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above, to be final and binding.

Provided always that this clause shall in no case extend to any sum which the Assured and/or charterers may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages and similar structures, consequent on such collision, or in respect of the Cargo or engagements of the insured Vessel, or for loss of life or personal injury.

This insurance is fully to indemnify the assured for any and all charges and expenses applicable to the vessel in respect of the perils insured hereunder, irrespective of the value of the vessel, and this policy shall pay its share of such charges and expenses in the proportion which the amount hereby insured bears to the value as declared herein.

It is agreed that the owners and/or managers are at liberty to insure Disbursements and/or other interests to any amount at their own absolute discretion: and the Underwriters hereby waive disclosure of the amounts so insured.

In the event of the vessel hereby insured being chartered and/or sub-chartered to the United Fruit Company, or any of its subsidiary companies, this insurance is to protect the charterers and/or sub-charterers in respect of the perils insured hereunder.

It is further understood and agreed that in the event of any of the within insured vessels being requisitioned by any Government under conditions whereby such government assumes the marine risks, the insurance in respect to said vessel shall be cancelled as and from the date of such requisition, and pro rata daily return of premium on the basis as hereinbefore provided for cancellation, shall be made thereon.

Anything in this policy to the contrary notwithstanding it is distinctly understood and agreed that this insurance is and shall in all matters pertaining thereto be treated as a separate and distinct contract in respect to each vessel insured hereunder.

It is hereby further specially understood and agreed that the terms and conditions of this printed form are to be regarded as substituted for the terms and conditions printed in the policy to which it is attached, the latter being hereby waived.

June 1st, 1918.

U. F. Co.
J. & E. No. 3—6,000-6-1918

ÆTNA INSURANCE CO. OF HARTFORD, CONN.
TALBOT, BIRD & CO. GENERAL AGENTS,
By

91

Where the Assured has paid or is liable for, any General Average contribution Policy shall be only in the proportion that the amount insured hereunder bears to the value for which these Assurers are liable, the amount of the Particular Average claim for which these Assurers are liable, the amount of the Particular Average claim what share of the contribution is recoverable from these Assurers; the extent of

and Detainments of all Kings, Princes and Peoples, of what nation, condition or quality soever, Barratry of the Master and Mariners, Explosions, Riots, or other causes of whatsoever nature arising either on shore or otherwise, causing Loss of or injury to the Property hereby insured, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Ship, &c., or any part thereof. And in case of any Loss or Misfortune, it shall be lawful for the Assured, their Factors, Servants and Assigns, to sue, labour and travel for, in and about the Defence, Safeguard and Recovery of the said Ship, &c., or any part thereof, without prejudice to this Insurance, to the Charges whereof the Assurers will contribute according to the Rate and Quantity of the sum herein assured. And it is expressly declared and agreed that no act of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

This Insurance also specially to cover (subject to the free of average warranty) loss of, or damage to hull or machinery, through the negligence of Master, Charterers, Mariners, Engineers, or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the Owners of the Ship, or any of them, or by the Manager. Masters, Mates, Engineers, Pilots, or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the steamer.

And it is further agreed, that if the Ship hereby insured shall come into collision with any other Ship or Vessel, and the Assured or Charterers shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby insured, we, the Assurers, will pay the Assured or Charterers such proportion of such sum or sums to be paid as our subscription hereto bear to the value of the Ship hereby insured. And in cases where the liability of the Ship has been contested with the consent in writing of a majority of the Underwriters on the hull and/or machinery (as aforesaid) we will also pay a like proportion of the costs thereby incurred or paid; but when both Vessels are to blame, then, unless the liability of the Owners or Charterers of one or both of such Vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of CROSS-LIABILITY as if the Owners or Charterers of each Vessel had been compelled to pay to the Owners or Charterers of the other of such Vessels such sum or sums as may be the proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the cases where both Vessels are the property, in part or in whole, of the same Owners or Charterers, all questions of responsibility and extent of liability as between the two Ships being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owner(s) or Charterers of both Vessels, and one to be appointed by the majority (in amount) of Underwriters interested in such Vessels; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any

part. When the Vessel fails in ballast to effect damage repair such sailing shall not be deemed to be a sailing for a loading port although she loads at the repairing port. In calculating the 3 per cent. above referred to, particular average occurring outside the period covered by this Policy may be added to particular average occurring within such period provided it occur upon the same voyage (as above defined), but only that portion of the claim arising within such period shall be recoverable hereon. The commencement of a voyage shall not be so fixed as to overlap another voyage on which a claim is made on this or the preceding Policy.

Should the Vessel at the expiration of this Policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

Should the Vessel be sold or transferred to other ownership, then, unless the Underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the Vessel has cargo on board and has already sailed from her loading port, or is at sea in ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A pro rata daily return of premium shall be made.

It is warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted) and also from all consequences of hostilities or war-like operations, whether before or after declaration of war.

TO RETURN { As per ... for each uncommenced month if it is mutually agreed to cancel this Policy. / per ... per cent. for each consecutive ... day. } and arrival.
the Vessel may be laid up in port:—

A period in part falling between two insurances to be allowed pro rata on each, underwriters on each insurance agreeing to pay their pro rata proportion of the Return due.

In the event of accident whereby loss or damage may result in a claim under this Policy, notice shall be given to the Underwriters, where practicable, prior to survey, so that they may appoint their own surveyor if they so desire; and whenever the extent of the damage is ascertainable, the majority (in amount) of the Underwriters may take or may require the Assured to take tenders for the repair of such damage. In cases where a tender is accepted by or with the approval of Underwriters, the Underwriters will make an allowance at the rate of 30 per cent. per annum on the insured value for the time actually lost in waiting for tenders. In the event of the Assured failing to comply with the conditions of this clause 5 per cent. shall be deducted from the amount of the ascertained claim.

Held covered in case of any breach of warranty as to cargo, trade, locality, or date of sailing, provided notice be given, and any additional premium required be agreed immediately after receipt of advices of breach or proposed breach by Owners.

In event of non-payment of premium thirty days after attachment this Policy No recovery for a constructive Total Loss shall be had hereunder, unless the

In Witness Whereof, the said ÆTNA INSURANCE COMPANY has caused this Policy to be signed by its President, and attested by its Marine Secretary, at its office in the CITY OF HARTFORD and State of Connecticut, and this Policy is made and accepted upon the above expressed conditions, but shall not be valid unless countersigned by TALBOT, BIRD & CO., INC., General Agents of the Company at NEW YORK CITY.

W. E. Whittelsey
Marine Secretary

Chas. J. Clark
President

Countersigned at *NEW YORK CITY*, this 1st day of June, *A. D. 1918.*

ÆTNA INSURANCE CO., HARTFORD, CONN.
TALBOT, BIRD & CO., INC., GENERAL AGENTS,
General Agents

By

Plaintiffs' Exhibit 6.

Original.

AMERICAN HULL POLICY

Aetna
Insurance Company
Hartford, Connecticut

No. 6315

Various

United Fruit Company et al

$ 485,215 @ 3 per cent. $ 14556.45

JOHNSON & HIGGINS,
61 WALL STREET, NEW YORK.
Entry Number 32103
Examined by [redacted]

Plaintiffs' Exhibit 7.

AMERICAN HULL POLICY 1916 FORM

No. Y5285

Boston Insurance Company

BY THIS POLICY OF INSURANCE

DO MAKE INSURANCE and cause United Fruit Company and/or Elders & Fyffes, Ltd.

PRINTED
RATE
L 170

AMOUNT INSURED

(Beginning and ending with Greenwich Mean Time).

$ 404344

But Warranted as follows:— see form attached

Upon the body, tackle, apparel, stores, ordnance, munitions, artillery, boats, and other furniture, boilers and machinery of the Steamship called the all form S. S. or by whatsoever name or names the said vessel is or shall be named or called; beginning the adventure upon the said Vessel, &c., as above, and so shall continue and endure during the period aforesaid, as employment may offer, in port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades whatsoever and wheresoever, under steam or sail; with leave to sail with or without pilots, to tow and be towed, and to assist vessels and/or craft in all situations and to any extent, and to go on trial trips. With liberty to discharge, exchange and take on board goods, specie, passengers, and stores, wherever the Vessel may call at or proceed to, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free of any claim in respect of deck cargo. Including all risks of docking, undocking, changing docks, or moving in harbours and going on or off gridiron or graving docks as often as may be done during the currency of this Policy.

The said Ship, &c., for so much as concerns the Assured, by agreement between the Assured and Assurers in this Policy, are and shall be valued at as follows:

Hull, tackle, apparel, furniture, &c. ..... $ .....

Boilers, machinery, &c., and everything connected therewith ..... $ ..... $ .....

Donkey boilers, winches, cranes, windlasses, steering gear, and electric light apparatus, shall be deemed to be part of the hull and not part of the machinery. Refrigerating machinery and insulation appertaining thereto not covered unless expressly included in this Policy, or unless the property of the owners of the Vessel.

THE INSURERS to be paid in consideration of this insurance ..... Dollars,

being at the rate of ..... per cent.

RATE 3 %

Warranted that the amount insured for account of the Assured and/or their managers on Disbursements, Commissions, or similar interests, "policy proof of interest" or "full interest admitted." or on excess or increased value of Hull or Machinery however described shall not, except as indicated below, exceed 15% of the insured valuation of the Vessel, but the Assured may in addition thereto effect "policy proof of interest" or "full interest admitted" insurance on any of the following interests:

Premiums (reducing or not reducing monthly) to any amount actually at risk, and

Freight and/or Chartered Freight and/or Anticipated Freight and/or Earnings and/or Hire or Profits on Time Charter and/or Charter for series of voyages for any amount not exceeding in the aggregate 25% of the insured valuation of the Vessel; and if the actual amount at risk on any or all of such interests shall exceed such 25% of the insured valuation of the Vessel, the Assured and/or their managers may, without prejudice to this warranty, insure whilst at risk the excess of such interests reducing as earned.

Provided always that a breach of this warranty shall not afford underwriters any defence to a claim by mortgagees or other third parties who may have accepted this policy without notice of such breach of warranty, nor shall it restrict the right of the Assured and/or their managers to insure in addition General Average and/or Salvage Disbursements whilst at risk.

PREMIUM $ 1213.32

TOUCHING THE ADVENTURES AND PERILS which we, the said Assurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and Peoples, of what nation, condition or quality soever, Barratry of the Master and Mariners, Explosions, Riots, or other causes of whatsoever nature arising either on shore or otherwise, causing Loss of or injury to the Property hereby insured, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Ship, &c., or any part thereof. And in case of any Loss or Misfortune, it shall be lawful for the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in, and about the Defence, Safeguard, and Recovery of the said ship, &c., or any part thereof, without prejudice to this Insurance to the Charges whereof the Assurers will contribute according to the Rate and Quantity of the sum herein assured. And it is expressly declared and agreed that no act of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

THIS INSURANCE ALSO SPECIALLY TO COVER (SUBJECT TO THE FREE OF AVERAGE WARRANTY) LOSS OF, OR DAMAGE TO HULL OR MACHINERY, THROUGH THE NEGLIGENCE of Master, Charterers, Mariners, Engineers, or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the Owners of the Ship, or any of them, or by the Manager. Masters, Mates, Engineers, Pilots, or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the steamer.

And it is further agreed, that IF THE SHIP HEREBY INSURED SHALL COME INTO COLLISION with any other Ship or Vessel, and the Assured or Charterers shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby Insured, we, the Assurers, will pay the Assured or Charterers such proportion of such sum or sums so paid as our subscriptions hereto bear to the value of the Ship hereby Insured. And in cases where the liability of the Ship has been contested with the consent in writing of a majority of the Underwriters on the hull and/or machinery (in amount) we will also pay a like proportion of the costs thereby incurred or paid; but where both Vessels are to blame, then unless the liability of the Owners or Charterers of one or both of such Vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of CROSS-LIABILITIES as if the Owners or Charterers of each Vessel had been compelled to pay to the Owners or Charterers of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both Vessels are the property, in part or in whole, of the same Owners or Charterers, all questions of responsibility and amount of liability as between the two ships being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owner or Charterers of both Vessels, and one to be appointed by the majority (in amount) of Underwriters interested in each Vessel; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above to be final and binding. PROVIDED ALWAYS that this clause shall in no case extend to any sum which the Assured or Charterers may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or engagements of the Insured Vessel, or for loss of life, or personal injury. And provided also that in the event of any claim being made by Charterers under this clause they shall not be entitled to recover in respect of any liability to which the Owners of the Ship, if interested in this Policy at the time of the Collision in question, would not be subject, nor to a greater extent than the shipowners would be entitled in such event to recover.

And it is further agreed that in the event of salvage, towage, or other assistance being rendered to the Vessel hereby insured by any Vessel belonging in part or in whole to the same Owners or Charterers, the value of such services (without regard to the common ownership of the Vessels) shall be ascertained by arbitration in the manner above provided for under the Collision Clause, and the amount so awarded, so far as applicable to the interest hereby insured shall constitute a charge under this Policy.

GENERAL AVERAGE AND SALVAGE CHARGES PAYABLE in accordance with York-Antwerp Rules, 1890, if so provided for in the contract of affreightment. As regards matters not provided for in the York-Antwerp Rules, 1890 (when the contract of affreightment provided for such rules), and also when the contract of affreightment does not provide for such rules, General Average and salvage charges shall be payable in accordance with the laws and usages of the United States. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance with same.

No claim shall be allowed in respect of scraping or painting the Vessel's bottom except as provided in Rule of Practice VIII of the Association of Average Adjusters of the United States.

Grounding in the Panama Canal or in the Suez Canal or in the Manchester Ship Canal or its connections, or in the River Mersey above Rock Ferry Slip, or in the River Plate (above Buenos Aires) or its tributaries, or in the Danube, Demerara, or Bilbao River or on the Yenikale or Kilitsch Bar, shall not be deemed a stranding.

AVERAGE PAYABLE ON EACH VALUATION separately or on the whole, without deduction of thirds, new for old, whether the average be particular or general.

In no case shall Underwriters be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this Policy.

IN ASCERTAINING WHETHER THE VESSEL IS A CONSTRUCTIVE TOTAL LOSS the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

In the event of total or constructive total loss, no claim to be made by the Assured for freight (whether chartered or insured separately or not) unless the same shall have been earned and the Vessel hereby insured shall not be abandoned for freight.

INSURANCE CO.

9J528

Plaintiffs' Exhibit 7.

UNITED FRUIT COMPANY and/or ELDERS & FYFFES, LTD.

and/or the owning companies of the below mentioned vessels, its, or their successors and assigns.

FOR ACCOUNT OF WHOM IT MAY CONCERN.

LOSS, IF ANY, PAYABLE TO THE UNITED FRUIT COMPANY OR THEIR ORDER.

are by this instrument insured on the Body, Tackle and Apparel, Ordnance, Munitions, Artillery, Boats and other Furniture, Machinery, Refrigerating Machinery and Insulation, if any, Boilers, Fuel, Stores and Provisions and anything connected therewith of and in the Steamships named below, or by whatsoever other name or names the said steamship is or shall be called, lost or not lost, for and *during the space of twelve calendar months.*

AT AND FROM the 1st day May, 1928.
UNTIL the 1st day of ... } beginning and ending with noon Greenwich mean time.

At and from any other, in port and at ... ports and in or on dry docks, on marine railways, gridirons and pontoons, at all times, ... whatsoever and whatsoever, under steam or sail, with leave to ... and to call at ... or ports in all situations and to any extent; ... and to take on board goods, specie, ... with liberty to ... a deviation, and with liberty for ... to assist and tow vessels in distress, and for ... if under cover. With leave to ... and put out of or off dry docks and on or off marine ... and including all risks of every kind incidental to these ...

THE UNDERWRITERS TO ATTACH AND COVER UPON THE STEAMERS NAMED AND FOR THE AMOUNT DESIGNATED HEREIN, BUT THE FOLLOWING AMOUNTS, AND FOR SO MUCH AS CONCERNS THE ASSURED, BY AGREEMENT AMONGST THE ASSURED AND ASSURERS IN THIS POLICY EACH OF SAID STEAMERS SHALL BE VALUED AS SHOWN BELOW:

AMOUNT INSURED HEREUNDER	Vessel	Value	AMOUNT INSURED HEREUNDER	Vessel	Value
	Pastores	$1,018,500	Forward		
	Tenadores	1,018,500		San Jose	$474,450
	Calamares	1,018,500		Esparta	474,450
	Morodio	[illegible]		Limon	474,450
	Peninsino	[illegible]		Sarramacca	421,740
	Castago	[illegible]		Coppename	421,470
	Tivives	632,610		Suriname	421,470
	Carrillo	632,610		Manzanares	527,170
	Sixaola	632,610		Tortuguero	500,810
	Turrialba	632,610		Reventazon	474,450
	Ahaggarez	632,610		Barranca	474,450
	Zacapa	632,610		Pacuare	434,925
	Metapan	632,610		Matina	421,742
	Atenas	632,610		Tacoronte	97,000
	Almirante	632,610		Taoro	58,200
	Santa Marta	632,610		Guanche	58,200
	San Mateo	533,500		Aquila de Oro	23,280
	Levisa	500,000			

Touching the adventures and perils which we, the said assurers, are contented to bear and take upon us, they are of the ... Arrest, Restraints and Detainments of Kings, Princes and People, of what nation, condition or quality soever, Barratry ... and all other perils, losses and misfortunes that have or shall come to the hurt, detriment or damage ... or any part thereof. And in case of any loss or misfortune it shall be lawful for the assured, their ... and assigns, to sue, labour and travel for, in and about the defense, safeguard and recovery of the said ship, etc., ... thereof, or any part thereof, without prejudice to this insurance; to the charges whereof the said Insurance Company will contribute ... proportion of the sum hereby assured. And it is expressly declared and agreed that no acts of the ... or them, shall in any case be construed a waiver, or preventing the assured, their executors, administrators or assigns, ... but it is agreed that a sequence of ... shall be treated separately, but it is agreed that a sequence of ... by the Assured or ... Assigns at and after the rate of ... per cent.

This insurance also specially to cover, subject to the "Seizure of 1899 clause below" cost of repairs, and/or loss of or damage to hull or machinery caused by the negligence of Master, Mariners, Engineers, or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the Machinery or Hull, or from explosions, riots, or other causes of whatsoever nature, whether arising from or otherwise, happening, causing loss of or injury to the property hereby insured, ... and to cover all risks incidental to steam navigation, or in or on dry docks, and on marine railways, gridirons and pontoons.

Anything herein to the contrary notwithstanding this insurance is warranted free from all claims of whatsoever nature, ... under the following clauses: other than Total Loss, and/or Constructive Total Loss, which shall be paid in full— ... Particular Average of each vessel separately considered, if any recoverable from other interests and/or parties, arising out of each separate ... shall be liable only for the amount by which such aggregate exceeds ... Each accident and/or series of accidents arising directly or indirectly from the same peril shall be treated separately, but it is agreed that a sequence of ... shall be treated as one accident.

In case of any claim for average, the regular to be paid without deduction of one-third, whether the average be particular or general.

In the event of this policy terminating or ending while the vessel is in course of a voyage, the underwriters agree to pay ... of this policy during such time as the policy is in force, provided the loss or damage sustained on the entire ... insured hereunder, if the policy had covered such voyage, is not entirety.

General Average and Salvage Charges payable in accordance with Bill of Lading conditions, and/or as per foreign custom, ... to be adjusted according to the contract of affreightment, if required, and in the event of default, towards ... or other assurance ... the value of such vessel (without regard to the insurance hereon) shall be ascertained by Arbitration in ... manner hereinafter provided for under the "Collision Clause," and the amount so awarded, so far as applicable to the interest ... hereby insured, shall constitute a charge under this Policy.

Warranted free from Capture, Seizure, and Detention, and the consequences of any attempt thereat, and all other consequences of hostilities (Piracy and Barratry excepted).

Held covered in the event of any breach of warranty, or deviation from the conditions of this Policy, at an equitable premium to be arranged, notice to be given on receipt of advices.

Privileged to comply with all Governmental and/or Naval instructions as to routes, ports of call and stoppages without prejudice to this insurance.

To RETURN ... per cent. for every 15 consecutive days the vessel may be in Port or in Dock, during such ... the vessel ... at the risk of the Underwriters, and having leave to dock, undock, and change docks, etc., and ... 12 hr. ... intervals to be allowed for pro rata on each Underwriter on each insurance agreeing to pay their pro rata proportion of ... both ports.

It is also agreed that any change of interest in the vessel hereby insured shall not affect the validity of this policy.

In the event of total loss or constructive total loss, no claim to be made by the Underwriters for freight, whether notice of ... has been given or not.

In ascertaining whether the Vessel is a constructive total loss the insured value shall be taken as the repaired value, and ... in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

Should the vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge or of call, she shall be ... deemed upon safely arrived at port of destination or until lost or a pro rata daily premium if so desired by the insured.

COLLISION CLAUSE.

And it is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel, and the ... assured shall in consequence of such collision become liable to pay and shall pay by way of damages to any other person ... any sum or sums not exceeding in respect of any one such collision the value of the ship insured hereunder, ... and if any ... insured ... thereby incurred, we, the ... will pay to the assured ... such proportion of such sum or sums so paid as our subscription hereto ... to the value of the ship hereby insured. And in case where the liability of the ship has been contested, with leave ... hereto ... such liability, we, the ... will also contribute to the costs and/or expenditure (in amount) ... we will also pay a like proportion of ... or both of such vessels becoming limited by law, always under the Collision Clause shall be notified on the principle of CROSS LIABILITY as if the owners and/or Charterers of each vessel had been compelled to pay to the owners and/or charterers of the ... owners of such vessel, such sum or sums representing of the latter's damages as may have been properly allowed in ascertaining the balance or sums payable by or to the assured and/or charterers in consequence of such collision.

And it is further agreed that the principles involved in this clause shall apply to the case where both vessels are the property, in part or in whole, of the same owners and/or charterers, all questions of responsibility and amount of liability as between the two vessels being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, failing such ... to be appointed by the judge in command of the vessel to be represented by the owners and/or charterers of both vessels, and ... to ... by the judge of a Court of Competent Jurisdiction at the port to which either vessel may be taken; the two Arbitrators chosen to choose a third ... before entering upon the reference. The terms of the Arbitration Act of 1889 to apply to such reference, and the decision of such ... or of any two of such three Arbitrators, appointed as above, to be final and binding.

Provided always that this clause shall in no case extend to any sum which the Assured and/or charterers may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages and similar ... compulsory or such collision, or in respect of the Cargo or engagements of the insured Vessel, or for loss of life or personal injury.

This insurance is fully to indemnify the assured by any and all charges and expenses applicable to the vessel in respect of the ... insured hereunder, irrespective of the value of the vessel, and the assured shall pay his share of such charges and expenses ... the proportion which the amount hereby insured bears to the value as declared herein.

It is agreed that the owners and/or managers are at liberty to insure Disbursements and/or other interests to any amount ... their own absolute discretion: and the Underwriters hereby waive disclosure of the amounts so insured.

In the event of the vessel hereby insured being chartered and/or sub-chartered to the United Fruit Company, or any of its ... companies, this insurance is to protect the charterers and/or sub-charterers in respect of the perils insured hereunder.

It is further understood and agreed that in the event of any of the within insured vessels being requisitioned by any Government ... under the provisions of any ... governmental ... of the marine risks, the insurance in respect to said vessel shall be cancelled ... and from the date of such requisition, and pro rata daily return of premium on the basis as hereinbefore provided for cancellation, shall be made thereon.

Anything in this policy to the contrary notwithstanding it is distinctly understood and agreed that this insurance is and shall ... all matters pertaining thereto be treated as a separate and distinct contract in respect to each vessel insured hereunder.

It is hereby further specially understood and agreed that the terms and conditions of this printed form are to be regarded ... as substituted for the terms and conditions printed in the policy to which it is attached, the latter being hereby waived.

May xx 192 8

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AMERICAN HULL POLICY 1916 FORM
Sept. 1, 1917 Edition.

Plaintiffs' Exhibit 8.

No. 861

The Thames & Mersey Marine Insurance Company, Limited,

UNITED STATES BRANCH, 27 William Street, New York,

INSURING $ 161,739.- DOLLARS OF THE AMOUNT COVERED BY THIS POLICY

AND

The Union Marine Insurance Company, Limited,

UNITED STATES BRANCH, 27 William Street, New York,

INSURING $ 161,739.- DOLLARS OF THE AMOUNT COVERED BY THIS POLICY.

UNITED FRUIT COMPANY AND/OR ELDERS AND FYFFES, LIMITED *For account of* Whom it may concern

Loss, if any, payable to as per form attached

Do make insurance and cause. themselves

To be insured, lost or not lost, to the amount of THREE HUNDRED TWENTY THREE THOUSAND FOUR HUNDRED SEVENTY EIGHT *Dollars*

Amount Insured. $ 323,478.-

At and from the As per form attached *Day of* 19

Until the *Day of* 19

(Beginning and ending with Greenwich Mean Time).

But Warranted as follows:— As per form attached

FORM ATTACHED DULY PAID THIS [illegible]

Upon the hull, tackle, apparel, stores, ordnance, munitions, artillery, boats, and other furniture, boilers and machinery of the Steamship As attached called the S.S. or by whatsoever name or names the said Vessel is or shall be named or called; beginning the adventure upon the said Vessel, &c., as above, and so shall continue and endure during the period aforesaid, as employment may offer, in port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades whatsoever and wheresoever, under steam or sail; with leave to sail with or without pilots, to tow and be towed, and to assist vessels and/or craft in all situations and to any extent, and to go on trial trips. With liberty to discharge, exchange and take on board goods, specie, passengers, and stores, wherever the Vessel may call at or proceed to, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free of any claim in respect of deck cargo. Including all risks of docking, undocking, changing docks, or moving in harbor and going on or off gridiron or graving docks as often as may be done during the currency of this Policy.

The said Ship, &c., for so much as concerns the Assured, by agreement between the Assured and Assurers in this Policy, are and shall be valued at as follows:

Hull, Tackle, apparel, furniture, &c. $

Boilers, machinery, &c., and everything connected therewith $ } $ as attached

Donkey boilers, winches, cranes, windlasses, steering gear, and electric light apparatus, shall be deemed to be part of the hull and not part of the machinery. Refrigerating machinery and insulation appertaining thereto not covered unless expressly included in this Policy, or unless the property of the owners of the Vessel.

Rate - 3 -

The Assurers to be paid in consideration of this insurance three - - Wine thousand seven hundred four and 34/100ths Dollars, being at the rate of per cent.

Premium $ 9,704.34

Warranted that the amount insured for account of the Assured and or their managers on Disbursements, Commissions or similar interests, "policy proof of interest" or "full interest admitted," or on excess or increased value of Hull or Machinery however described, shall not, except as indicated below, exceed 15% of the insured valuation of the Vessel, but the assured may in addition thereto effect "policy proof of interest" or "full interest admitted" insurance on any of the following interests:"

Premiums (reducing or not reducing monthly) to any amount actually at risk, and

Freight and/or Chartered Freight and/or Anticipated Freight and/or Earnings and/or Hire or Profits on Time Charter and/or Charter for series of voyages for any amount not exceeding in the aggregate 15% of the insured valuation of the Vessel; and if the actual amount at risk on any or all of such interests shall exceed such 15% of the insured valuation of the Vessel, the Assured and or their managers may, without prejudice to this warranty, insure whilst at risk the excess of such interests reducing as earned.

Provided always that a breach of this warranty shall not afford underwriters any defense to a claim by mortgagees or other third parties who may have accepted this policy without notice of such breach of warranty, nor shall it restrict the right of the Assured and/or their managers to insure in addition General Average and/or Salvage Disbursements whilst at risk.

Touching the Adventures and Perils which we, the said Assurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and Peoples, of what nation, condition or quality soever, Barratry of the Master and Mariners, Explosions, Riots, or other causes of whatsoever nature arising either on shore or otherwise, causing Loss of or injury to the Property hereby insured, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Ship, &c., or any part thereof. And in case of any Loss or Misfortune, it shall be lawful for the Assured, their Factors, Servants, and Assigns, to sue, labor, and travel for, in, and about the Defence, Safeguard, and Recovery of the said Ship, &c., or any part thereof, without prejudice to this Insurance, to the Charges whereof the Assurers will contribute according to the Rate and Quantity of the sum herein assured. And it is expressly declared and agreed that no act of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

This Insurance also specially to cover (subject to the free of average warranty) loss of, or damage to hull or machinery, through the negligence of Master, Charterers, Mariners, Engineers, or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the Owners of the Ship, or any of them, or by the Manager. Masters, Mates, Engineers, Pilots, or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the steamer.

And it is further agreed, that if the Ship hereby insured shall come into collision with any other Ship or Vessel, and the Assured or Charterers shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby insured, we, the Assurers, will pay the Assured or Charterers such proportion of such sum or sums so paid as our subscriptions hereto bear to the value of the Ship hereby insured. And in case where the liability of the aforesaid has been contested with the consent in writing of a majority of the Underwriters on the same, the Assurers (in proportion as aforesaid) will also pay the Assured or Charterers such proportion of [illegible] as aforesaid. And it is further agreed that the Collision Clause shall be settled on the principles of cross-liabilities, as if the Owners or Charterers of each Vessel had been compelled to pay to the Owners or Charterers of the other Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both Vessels are the property, in part or in whole, of the same Owners or Charterers, all questions of responsibility and amount of liability as between the two Ships being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owners or Charterers of both Vessels, and one to be appointed by the majority (in amount) of Underwriters interested in each Vessel; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference and the decision of such single, or of any two of such three Arbitrators, appointed as above to be final and binding. Providing always that this clause shall in no case extend to any sum which the Assured or Charterers may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or engagements of the Insured Vessel, or for loss of life, or personal injury. And provided also that in the event of any claim being made by Charterers under this clause they shall not be entitled to recover in respect of any liability to which the owners of the Ship, if interested in this Policy at the time of the Collision in question, would not be subject nor to a greater extent than the Shipowners would be entitled in such event to recover.

And it is further agreed that in the event of salvage, towage, or other assistance being rendered to the Vessel hereby insured by any Vessel belonging in part or in whole to the same Owners or Charterers, the value of such services (without regard to the common ownership of the Vessels) shall be ascertained by arbitration in the manner above provided for under the Collision Clause, and the amount so awarded as far as applicable to the interest hereby insured shall constitute a charge under this Policy.

General Average and salvage charges payable in accordance with York-Antwerp Rules, 1890, if so provided for in the contract of affreightment. As regards matters not provided for in the York-Antwerp Rules, [illegible] the contract of affreightment provides for such rules), and also when the contract of affreightment does not provide for such rules, General Average and salvage charges shall be payable in accordance with the laws and usages of the United States. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance with same.

No claim shall be allowed in respect of scraping or painting the Vessel's bottom except as provided in Rule of Practice VIII of the Association of Average Adjusters of the United States.

Grounding in the Panama Canal or in the Suez Canal or in the Manchester Ship Canal or its connections, or in the River Mersey above Rock Ferry Slip, or in the River Plate (above Buenos Aires) or its tributaries, or in the Danube, Demerara, or Bilbao River, or on the Yenisale or Lifasa Bar, shall not be deemed to be a stranding.

Average payable on each valuation separately or on the whole, without deduction of thirds, new for old, whether the average be particular or general.

In no case shall Underwriters be liable for unrepaired damage in addition to a consequent total loss sustained during the term covered by this Policy.

In ascertaining whether the Vessel is a constructive total loss, both the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

In the event of total or constructive total loss, notice to be made by the Underwriters for freight, whether notice of abandonment has been given or not.

Notwithstanding anything herein contained to the contrary this Policy is warranted free from particular average under 3 per cent., or [illegible] shall have been stranded, sunk, on fire, or in collision with any other ship or

1. Where the Assured has paid, or is liable for, General Average contribution and the contributory value is greater than the amount recoverable under this policy, he shall be entitled to recover in the proportion that the amount insured hereby bears to the contributory value.
2. Where the contributory value has been reduced by a deduction from the Assurers' liability in order to ascertain the amount recoverable under this policy, the deduction shall be deducted from the amount insured under this policy in order to ascertain the amount recoverable from the Assurers; the extent of the liability of the Assurers for salvage shall be computed in like manner.
3. In event of abandonment of premium thirty days after attachment this policy may be cancelled by the Assurers upon notice being given to the assured.
4. No recovery for a Constructive Total Loss shall be had hereunder, unless the expense of recovering and repairing the vessel the insured value.

Plaintiffs' Exhibit 7.

No: 75785

AMERICAN HULL
1916 FORM

Various Vessels

Boston Insurance Company

INSURED

United Fruit Co & /or etc

Amount Insured $ 404 344

Rate, 3 % Premium, $ 12130 32

Expires May 1 1919 noon

NEW YORK OFFICE
66 BEAVER STREET

DIRECTED BY
JOHNSON & HIGGINS
Entered 7328
Examined
49 & 51 WALL ST., N. Y.

92b

...ended and discharged two months, whichever may first happen, and further, in either case, until she begins to load a subsequent cargo or sails in ballast for a loading port. When the Vessel sails in ballast to effect damage repair such sailing shall not be deemed to be a sailing for a loading port although she loads at the repairing port. In calculating the 3 per cent. above referred to, particular average occurring outside the period covered by this Policy may be added to particular average occurring within such period provided it occur upon the same voyage (as above defined), but only that portion of the claim arising within such period shall be recoverable hereon. The commencement of a voyage shall not be so fixed as to overlap another voyage on which a claim is made on this or the preceding Policy.

SHOULD THE VESSEL AT THE EXPIRATION OF THIS POLICY BE AT SEA, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

SHOULD THE VESSEL BE SOLD OR TRANSFERRED TO OTHER OWNERSHIP, then, unless the Underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the Vessel has cargo on board and has already sailed from her loading port, or is at sea in ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A pro rata daily return of premium shall be made.

WARRANTED FREE OF CAPTURE, SEIZURE, ARREST, RESTRAINT, OR DETAINMENT, AND THE CONSEQUENCES THEREOF or any attempt thereat (piracy excepted) and ALSO FROM ALL CONSEQUENCES OF HOSTILITIES OR WAR-LIKE OPERATIONS, whether before or after declaration of war.

TO RETURN { ..... per cent. for each uncommenced month if it be mutually agreed to cancel this Policy. / ..... per cent. for each consecutive ..... days the Vessel may be laid up in port:— } and arrival.

A period in port falling between two insurances to be allowed pro rata on cash, underwriters on each insurance agreeing to pay their pro rata proportion of the Return due.

IN THE EVENT OF ACCIDENT whereby loss or damage may result in a claim under this Policy, NOTICE SHALL BE GIVEN TO THE UNDERWRITERS, where practicable, prior to survey, so that they may APPOINT THEIR OWN SURVEYOR IF THEY SO DESIRE; and whenever the extent of the damage is ascertainable, the majority (in amount) of the Underwriters may take or may require the Assured to take tenders for the repair of such damage. In cases where a tender is accepted by or with the approval of Underwriters, the Underwriters will make an allowance at the rate of 30 per cent. per annum on the insured value for the time actually lost in waiting for tenders. IN THE EVENT OF THE ASSURED FAILING TO COMPLY WITH THE CONDITIONS OF THIS CLAUSE 15 PER CENT. SHALL BE DEDUCTED FROM THE AMOUNT OF THE ASCERTAINED CLAIM.

HELD COVERED in case of any breach of warranty as to cargo, trade, locality, or date of sailing, provided notice be given, and any additional premium required be agreed immediately after receipt of advices of breach or proposed breach by Owners.

"Notwithstanding anything herein contained to the contrary, this Policy is warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or any attempt thereat, piracy excepted, and also from all consequences of hostilities or warlike operations, whether before or after declaration of war."

In Witness Whereof, the said Boston Insurance Company have caused these Presents to be signed by their President or Vice-President and attested by their Secretary or Assistant Secretary, in the City of New York, this 22nd day of May one thousand nine hundred and Eighteen

Asst. Secretary. Vice-President.

O-200-M

No claim shall be allowed in respect of scraping or painting the Vessel's bottom except as provided in Rule of Practice VIII of the Association of Average Adjusters of the United States.

Grounding in the Panama Canal or in the Suez Canal or in the Manchester Ship Canal or its connections, or in the River Mersey above Rock Ferry Slip, or in the River Plate (above Buenos Aires) or its tributaries, or in the Danube, Demerara, or Bilbao River, or on the Yenikale or Bilbao Bar, shall not be deemed to be a stranding.

Average payable on each valuation separately or on the whole, without deduction of thirds, new for old, whether the average be particular or general.

In no case shall Underwriters be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this Policy.

In ascertaining whether the Vessel is a constructive total loss, only the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

In the event of total or constructive total loss, notice to be made by the Underwriters for freight, whether notice of abandonment has been given or not.

Notwithstanding anything herein contained to the contrary this Policy is warranted free from particular average under 3 per cent., or unless stranding be stated, but nevertheless when the Vessel shall have been stranded, sunk, on fire, or in collision with any other Ship or Vessel, Underwriters shall pay the damage occasioned thereby, and the expenses of sighting the bottom after stranding shall be paid, if reasonably incurred, even if no damage be found.

The warranty and conditions as to average 3 per cent. to be applicable to each voyage as if separately insured, and a voyage shall be deemed to commence at one of the following periods to be selected by the Assured when making up the claim, viz.: at any time at which the Vessel (1) begins to load cargo or (2) sails in ballast to a loading port. Such voyage shall be deemed to continue during the ensuing period until either she has made one outward and one homeward passage (including an intermediate ballast passage, if made) or has carried and discharged two cargoes, whichever may first happen, and further, in either case, until she begins to load a subsequent cargo or sails in ballast for a loading port. When the Vessel sails in ballast to effect damage repair such sailing shall not be deemed to be a sailing for a loading port although she trades at the repairing port. In calculating the 3 per cent. above referred to, particular average occurring outside the period covered by this Policy may be added to particular average occurring within such period provided it occur upon the same voyage (as above defined), but only that portion of the claim arising within such period shall be recoverable hereon. The commencement of a voyage shall not be fixed so as to overlap another voyage on which a claim is made on this or the preceding Policy.

Should the Vessel at the expiration of this Policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

Should the Vessel be sold or transferred to other ownership, then, unless the Underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the Vessel has cargo on board and has already sailed from her loading port, or is at sea in ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A pro rata daily return of premium shall be made.

Notwithstanding anything herein contained to the contrary, this policy is warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof, or of any attempt thereat (piracy excepted) and also from all consequences of hostilities or warlike operations, whether before or after declaration of war.

To Return { 48 81/100ths } per cent. net for each uncommenced month if it be mutually agreed to cancel this Policy. } and arrival

per cent. net for each consecutive days the Vessel may be laid up in port:—

A period in port falling between two insurances to be allowed pro rata on each, underwriters on each insurance agreeing to pay their pro rata proportion of the Return due.

In the event of anything whereby loss or damage may result in a claim under this Policy, notice shall be given to the Underwriters, where practicable, prior to survey, so that they may appoint their own Surveyors if they so desire and wherever the extent of the damage is ascertainable, the majority (in amount) of the Underwriters may take it may require the Assured to take tenders for the repair of such damage. In cases where a tender is accepted by or with the approval of the Underwriters, the Underwriters will make an allowance at the rate of 50 per cent. per annum on the insured value for the time actually lost in waiting for tenders. In the event of the Assured failing to comply with the conditions of this clause 10 per cent. shall be deducted from the amount of the ascertained claim.

And covenant in case of any breach of warranty as to cargo, trade, locality, or date of sailing, provided notice be given, and any additional premium required be agreed immediately after receipt of advices of breach or proposed breach by Owners.

IN WITNESS WHEREOF, THE THAMES & MERSEY MARINE INSURANCE COMPANY, LIMITED, OF LIVERPOOL, and THE UNION MARINE INSURANCE COMPANY, LIMITED, OF LIVERPOOL, have caused these Presents to be signed by their Manager in the City of New York, but this Policy shall not be valid unless countersigned by the duly authorized representative of the said Companies.

THE THAMES & MERSEY MARINE INSURANCE COMPANY, *Limited*,

ONE HUNDRED SIXTY ONE THOUSAND SEVEN HUNDRED THIRTY NINE - - - - - - - - Dollars.

THE UNION MARINE INSURANCE COMPANY, *Limited*,

ONE HUNDRED SIXTY ONE THOUSAND SEVEN HUNDRED THIRTY NINE - - - - - - - - - Dollars.

W. W. Fowler

Manager

Countersigned at New York the 1st day of May, 19 18

Frank St. Duty

Assistant Manager

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Plaintiffs' Exhibit 8.

UNITED FRUIT COMPANY and/or ELDERS & FYFFES, LTD.

and/or the owning companies of the below mentioned vessels, its, or their successors and assigns.

FOR ACCOUNT OF WHOM IT MAY CONCERN.

LOSS, IF ANY, PAYABLE TO THE UNITED FRUIT COMPANY OR THEIR ORDER.

are by this instrument insured on the Body, Tackle and Apparel, Ordnance, Munitions, Artillery, Boats and other Furniture, Machinery, Refrigerating Machinery and Insulation, if any, Boilers, Fuel, Stores and Provisions and anything connected therewith of and in the Steamships named below, or by whatsoever other name or names the said steamship is or shall be called, lost or not lost, for and *during the space of twelve calendar months.*

AT AND FROM the 1st day of May, 1918.
UNTIL the 1st day of May, 1919.
} beginning and ending with noon Greenwich mean time.

As employment may offer, in port and at sea, in docks and in or on dry docks, on marine railways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades whatsoever and wheresoever, under steam or sail, with leave to sail with or without Pilots, TO TOW AND TO BE TOWED, and to assist vessels and/or craft in all situations and to any extent; to render salvage services, and to go on trial trips, with liberty to discharge, exchange, and to take on board goods, specie, passengers and stores, wherever the vessel may call at or proceed to, without being deemed a deviation, and with liberty to carry goods, live cattle, etc., on deck or otherwise and liable for contribution to jettison of same if under cover. With leave to dock, undock, and change docks as often as may be required, and to go in or on, and out of or off dry docks and on or off marine railways and/or gridirons and/or pontoons and/or, to adjust compasses, and including all risks of every kind incidental to these operations.

THIS INSURANCE TO ATTACH AND COVER UPON THE STEAMERS NAMED AND FOR THE AMOUNT DESIGNATED UPON EACH IN THE FOLLOWING SCHEDULE, AND FOR SO MUCH AS CONCERNS THE ASSURED. BY AGREEMENT BETWEEN THE ASSURED AND ASSURERS IN THIS POLICY EACH OF SAID STEAMERS SHALL BE VALUED AS SHOWN BELOW:

AMOUNT INSURED HEREUNDER	Vessel	Value	AMOUNT INSURED HEREUNDER	Vessel	Value
$ 20,370.-	Pastores	$1,018,500	Forward 208,300.-		
20,370.-	Tenadores	1,018,500	9,490.-	San Jose	$174,450
20,370.-	Calamares	1,018,500	9,490.-	Esparta	474,450
~~Heredia~~	~~688,610~~		9,490.-	Limon	474,450
~~Peninsula~~	~~688,610~~		8,434.-	Sarramacca	421,740
~~Cartago~~	~~688,610~~		8,434.-	Coppename	421,740
12,652.-	Tivives	632,610	8,434.-	Suriname	421,740
12,652.-	Carrillo	632,610	10,544.-	Manzanares	~~527,170~~ 506250
12,652.-	Sixaola	632,610	10,016.-	Tortuguero	500,810
12,652.-	Turriabla	632,610	9,490.-	Reventazon	474,450
12,652.-	Abangarez	632,610	9,490.-	Barranca	~~474,450~~ 455200
12,652.-	Zacapa	632,610	9,698.-	Pacuare	~~434,935~~ 417455
12,652.-	Metapan	632,610	8,434.-	Matina	~~421,740~~ 404500
12,652.-	Atenas	632,610	1,940.-	Tacoronte	97,000
12,652.-	Almirante	632,610	1,164.-	Taoro	58,200
12,652.-	Santa Marta	632,610	1,164.-	Guanche	58,200
10,670.-	San Mateo	533,500	466.-	Aquila de Oro	23,280
10,000.-	Levisa	500,000	$ 323,475.-		
$ 208,300.-					

Touching the adventures and perils which we, the said assurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what nation, condition or quality soever, Barratry of the Master and Mariners, and all other perils, losses and misfortunes that have or shall come to the hurt, detriment or damage of the said ship, etc., or any part thereof. And in case of any loss or misfortune it shall be lawful for the assured, their factors, servants and assigns, to sue, labor and travel for, in, and about the defence, safeguard and recovery of the said ship, etc., or any part thereof, without prejudice to this insurance; to the charges whereof the said Insurance Company will contribute according to the Rate and Quantity of the sum herein assured. And it is expressly declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered a waiver, or acceptance of abandonment; having been paid the consideration for this Insurance by the Assured or their Assigns at and after the rate of 3 per cent.

This insurance also specially to cover, subject to the "Excess of £600 clause below" cost of repairs, and/or loss of or damage to Hull or Machinery through the negligence of Master, Mariners, Engineers, or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the Machinery or Hull, or from explosions, riots, or other causes of whatsoever nature, arising either on shore or otherwise, howsoever, causing loss of or injury to the property hereby insured, provided such loss or damage has not resulted from want of due diligence by the owners of the ship, or any of them, or by the Manager, and to cover all risks incidental to steam navigation, or in or on dry docks, and on marine railways, gridirons and pontoons.

Anything herein to the contrary notwithstanding this insurance is warranted free from all claims of whatsoever nature, including claims under the collision clause,—other than Total Loss, and/or Constructive Total Loss, which shall be paid in full,—unless the aggregate of such claims, unreduced by any recoveries from other interests and/or parties, arising out of each separate accident exceeds £600 or $2,425, in which case this insurance shall be liable only for the amount by which such aggregate exceeds £600 or $2,425. For the purpose of this insurance each accident shall be treated separately, but it is agreed that a sequence of damages arising directly or indirectly from the same peril shall be treated as one accident.

In case of any claim for average, the repairs to be paid without deduction of one-third, whether the average be particular or general.

In the event of this policy beginning or ending while the vessel is in course of a voyage, the underwriters agree to pay their proportion of loss or damage sustained while the policy is in force, provided the loss or damage sustained on the entire voyage would have been recoverable if the policy had covered such voyage in its entirety.

General Average and Salvage Charges payable in accordance with Bill of Lading conditions, and/or as per foreign customs according to foreign statement, and/or York-Antwerp Rules, if required; and in the event of Salvage, towage, or other assistance being rendered to the vessel hereby insured by any vessel belonging in part or in whole to the same owners, it is hereby agreed that the value of such services (without regard to the common ownership of the vessels) shall be ascertained by Arbitration in the manner hereinafter provided for under the "Collision Clause," and the amount so awarded, so far as applicable to the interest hereby insured, shall constitute a charge under this Policy.

Warranted free from Capture, Seizure, and Detention, and the consequences of any attempt thereat, and all other consequence of hostilities (Piracy and Barratry excepted).

Held covered in the event of any breach of warranty, or deviation from the conditions of this Policy, at an equitable premium to be arranged, notice to be given on receipt of advices.

Privileged to comply with all Governmental and/or Naval instructions as to routes, ports of call and stoppages without prejudice to this insurance.

To RETURN 5% net per cent. for every 15 consecutive days the vessel may be in Port or in Dock, during such period the vessel being at the risk of the Underwriters, and having leave to dock, undock, and change docks, etc., and 10 2.3% net per cent. for every 15 days of unexpired time, if this Insurance be cancelled, and arrival. A period in port falling between two insurances to be allowed for pro rata on each, Underwriters on each insurance agreeing to pay their pro rata proportion of such return.

It is also agreed that any change of interest in the vessel hereby insured shall not affect the validity of this policy.

In the event of total loss or constructive total loss, no claim to be made by the Underwriters for freight, whether notice of abandonment has been given or not.

In ascertaining whether the Vessel is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

Should the vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge or of call, she shall be held covered until safely arrived at port of destination or until lost at a pro rata daily premium if so desired by the insured.

COLLISION CLAUSE.

And it is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel, and the assured and/or charterers shall in consequence thereof become liable to pay and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the ship hereby insured, we, the assurers, will pay the assured and/or charterers such proportion of such sum or sums so paid as our subscriptions hereto bear to the value of the ship hereby insured. And in cases where the liability of the ship has been contested, with the consent in writing of a majority of the underwriters on the hull and/or machinery (in amount), we will also pay a like proportion of the costs thereby incurred or paid; but when both vessels are to blame, then unless the liability of the owners and/or charterers of one or both of such vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of CROSS LIABILITIES as if the owners and/or Charterers of each vessel had been compelled to pay to the owners and/or charterers of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the assured and/or charterers in consequence of such collision.

And it is further agreed that the ships insured in this clause shall apply to the case where both vessels are the property, in part or in whole, of the assured and/or charterers, and any question or difference arising as to the amount to be paid by or to the assured and/or charterers in consequence of such collision, or as to the proportion of liability as between the two ships, being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement to the decision of Arbitrators, one to be appointed by the managing owners and/or charterers of both vessels, and one to be appointed by the majority in amount of Underwriters interested in each vessel; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference. The terms of the Arbitration Act of 1889 to apply to such reference, and the decision of such sheole, or of any two of such three Arbitrators, appointed as above, to be final and binding.

Provided always that this clause shall in no case extend to any sum which the assured and/or charterers may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages and similar structures, consequent on such collision, or in respect of the Cargo or engagements of the Insured Vessel, or for loss of life or personal injury.

This insurance is fully to indemnify the assured for any and all charges and expenses applicable to the vessel in respect of the perils insured hereunder, irrespective of the value of the vessel, and this policy shall pay its share of such charges and expenses in the proportion which the amount hereby insured bears to the value as declared herein.

It is agreed that the owners and/or managers are at liberty to insure Disbursements and/or other interests to any amount at their own absolute discretion: and the Underwriters hereby waive disclosure of the amounts so insured.

In the event of the vessel hereby insured being chartered and/or sub-chartered to the United Fruit Company, or any of its subsidiary companies, this insurance is to protect the charterers and/or sub-charterers in respect of the perils insured hereunder.

It is further understood and agreed that in the event of any of the within insured vessels being requisitioned by any Government under conditions whereby such government assumes the marine risks, the insurance in respect to said vessel shall be cancelled as and from the date of such requisition, and pro rata daily return of premium on the basis as hereinbefore provided for cancellation, shall be made thereon.

Anything in this policy to the contrary notwithstanding it is distinctly understood and agreed that this insurance is and shall be all matters pertaining thereto be treated as a separate and distinct contract in respect to each vessel insured hereunder.

It is hereby further specially understood and agreed that the terms and conditions of this printed form are to be regarded as substituted for the terms and conditions printed in the policy to which it is attached, the latter being hereby waived.

New York, May 1st, 1918.

THE THAMES AND MERSEY MARINE INSURANCE COMPANY, LIMITED,
THE UNION MARINE INSURANCE COMPANY, LIMITED,
BRANCH,

Kenneth Kay
ASSISTANT MANAGER.

U. F. Co
J. & H. No. 3—8,000-4-1918

Attached to and made part of Policy No. 351

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No. 351

AMERICAN HULL 1916 FORM
Sept. 1, 1917 Edition.

The Thames & Mersey Marine Insurance Company, Limited,
UNITED STATES BRANCH
—AND—
The Union Marine Insurance Company, Limited,
UNITED STATES BRANCH.

ASSURED

UNITED FRUIT COMPANY AND/OR ELDERS AND FYFFES, LIMITED.

Expires May 1st, 1919.

H. K. FOWLER, Manager,
F. H. CAUTY, Assistant Manager,
27 WILLIAM STREET, NEW YORK.

SETTLED ... Two hundred and twenty seven 62/100 DOLLARS
U.S.P.O. Lat anchorage claim 100%

227 62/100
November 1st 1917
Jno. D. L. pays $113.81
Union --- 113.81
$227.62

SETTLED HEREON Thirty pounds five shillings and [illegible] DOLLARS
FOR £30-5-0 Nov. 22-1917
Struck a submerged wreck
£ 30-5-0

EFFECTED BY
JOHNSON & HIGGINS
Entered 32103
Examined
45 & 51 WALL ST., N. Y.

[fol. 96] PLAINTIFFS' EXHIBIT 9

Recovery Statement

(Omitted pursuant to stipulation.)

PLAINTIFFS' EXHIBIT 10

Section 4 of the Act of Parliament of December 21, 1906, Commonly Known as the Marine Insurance Act

4. (1) Every contract of marine insurance by way of gaming or wagering is void.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract—

(a) Where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or

(b) Where the policy is made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term:

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

PLAINTIFFS' EXHIBIT 11

(Edwards v. Motor Union.)

(Omitted pursuant to stipulation.)

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[fol. 97] PLAINTIFFS' EXHIBIT 12

S/S. "Almirante"

(Sunk September 6th, 1918, After Collision with S/S. "Hisko")

(Page 18 Original construction cost (1908) $575,595.)
(Page " Original cost to owners (1914) 400,000.)

Total Insurances in Force in 1918

Page 42	American Insurance on Hull On an agreed valuation of $632,610. (Including line of $50,609. retained by United Fruit Company)		335,282.
Page 44	English Insurance on Hull	£61,305.	
" "	English Insurance on P P I policies	65,105.	
		£126,410.	
	At exchange of say—4.75¾		601,395.57
			Say $936,677.57
Page 29	Award (including stores and sundries) (i. e. recovery from "Hisko")		$1,763,013.38
	Legal Expenses	$300,024.53	
	After deduction of legal and other expenses and allowing credit for bank interest, the net recovery received by owners amounted to $1,463,997.09 which was apportioned as follows:		
Page 45	American Insurance (Hull policies)	$297,602.90	
	Less recovery applicable to line retained by United Fruit Company	44,921.54	$252,681.36

[fol. 98]

Page 44 English Underwriters Hull Policies	£61,248.7.6		
or	$207,367.88		
Legal Expenses	23,170.53	184,197.35	
		$436,878.71	
Page 44 English Underwriters P P I Policies	£32,552.10.0		
or	$107,992.92		
Legal Expenses	21,993.28	85,999.64	
		$522,878.35	
Underwriters Received			$522,878.35
Credited to Owners	$896,197.20		
Also credited to Owners Applicable to line retained by United Fruit Company	44,921.54	941,118.74	
Owners Received			941,118.74
			$1,463,997.09

Final Position of Assured:

Originally received from Underwriters	$936,677.57		
Less line retained by United Fruit Co.	50,609.00	Say	$886,068.57
Balance recovery as per statement, including $44,921.54 The proportion of recovery applicable to line retained by the United Fruit Company			941,118.74
Net balance after payment of all expenses			$1,827,187.31

MEM—

The amount awarded by the court as representing the Owners' loss was $1,763,013.38.

[fol. 99] PLAINTIFFS' EXHIBIT 13

1. Hull Underwriters in England Who Also Had P. P. I. Policies

	Hull	P.P.I.
Commercial Union	£ 4,784.	£ 3,000.
London Assurance	4,784.	2,500.
Royal Exchange	4,784.	1,835.
Merchants	3,596.	1,275.
Sea	1,429.	3,975.
Motor Union	950.	1,220.
United British	950.	1,220.
British Commonwealth	475.	610.
British & Foreign	1,554.	6,915.
Lloyd's	31,545.	21,140.
	£54,851. (About 90% of hull total)	£43,690. (About two thirds of P P I total)

2. Those Only on Hull

Yangtsze	£ 950.
Norwich Union	2,398.
Thames & Mersey	1,864.
Ulster	621.
Maritime	621.
	£6,454.

1. Received say £48,600 Hull
17,400 P. P. I.

£66,000.

or say, 120% of amounts paid on Hull.

[fol. 100] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

#844

L. 57-271

ÆTNA INSURANCE COMPANY, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant

L. 57-272

UNION MARINE AND GENERAL INSURANCE COMPANY, LIMITED, Formerly Union Marine Insurance Company, Limited, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant

L. 57-273

BOSTON INSURANCE COMPANY, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant

Bigham, Englar, Jones & Houston (D. Roger Englar, and Martin Detels, of Counsel), for plaintiffs.

Kirlin, Campbell, Hickox, Keating & McGrann (Cletus Keating and Richard Sullivan, of Counsel), for defendant.

OPINION OF PATTERSON, D. J.

[fol. 101] PATTERSON, D. J.:

The three actions were tried together. There was an agreed statement of facts, with trial before a jury of one and counter motions for directed verdict.

The plaintiffs were hull insurers of the defendant's steamship "Almirante". The policies were valued policies, it being agreed in them that the vessel had a value of $632,610. Other policies of similar tenor were issued by other insurance companies, and the aggregate amount of insurance (including an amount carried by the defendant as self-in-

surer) was $632,610. On September 6, 1918, the "Almirante" came into collision with the steamship "Hisko" and became a total loss. A few months later the plaintiffs and other insurers paid to the defendant the full amounts covered by the policies.

The insurers and the defendant jointly retained counsel to push a claim against the United States as owner of the "Hisko". Congress passed a special act allowing suit against the United States for the loss of the "Almirante", but barring recovery of interest. In the suit then brought the defendant recovered $1,761,693.02 as the actual value of the "Almirante" and received payment of that amount from the United States on July 26, 1932. The legal expenses incurred in the litigation came to $300,024.53, and it is conceded that such expenses were fair and reasonable. They were paid out of the fund, and the net recovery was thus reduced to $1,461,668.49. Out of this balance the defendant remitted to the plaintiffs and other hull insurers, in September and November 1932, the amounts of their payments under the policies, less part of the expenses. The [fol. 102] part of the expenses charged against the insurers was smaller, in proportion to their interests, than the part charged against the defendant. As a result of this treatment of the fund recovered, the plaintiffs and other insurers in like position received back about 89 per cent of what they had originally paid to the defendant under the policies.

The plaintiffs make alternate claims in their pleadings. The broader claim is that the hull insurers as a group are entitled to the entire net recovery, $1,461,668.49, and that the plaintiffs should have their proportionate shares of that amount, less what they have already received. This claim is not pressed in this court, in view of what was decided in The Livingstone, 130 Fed. 746 (C. C. A. 2). The narrower claim is for the full amount of their payments to the defendant under the policies in 1918, without deduction of any kind, and for interest on those payments from 1918, less of course the amounts received in 1932. All American underwriters are making similar claims; the English underwriters are making no claims.

There are further facts relative to policies of additional insurance on the "Almirante" and to subrogation receipts sent out by the defendant to two of the plaintiffs. They

are without significance in the present controversy and will be passed.

A marine policy of insurance being a contract of indemnity, the insurer on payment is subrogated to the rights of the insured against persons who caused the loss. Phœnix Ins. Co. v. Erie Transportation Co., 117 U. S. 312; Liverpool Steam Co. v. Phenix Ins. Co., 129 U. S. 397, 462. The subrogation is total where the insured's loss has been made [fol. 103] good in full by the insurer. It is partial where only a part of the loss has been paid by the insurer. In the latter case the insurer is entitled to whatever is left after the insured has been made whole for his loss and for his expenses in recovering from those responsible for the loss. Shawnee Fire Ins. Co. v. Cosgrove, 86 Kans. 374; Svea Ins. Co. v. Packham, 92 Md. 464; Newcomb v. Cincinnati Ins. Co., 22 Ohio St. 382. By the rule of subrogation insured and insurer are ultimately placed in the same position that they would have occupied if the insured had first recovered from the persons at fault and had thereafter brought suit to compel the insurer to honor the policy; in such a case the insurer, if liable at all, is liable only for the balance necessary to afford complete reimbursement to the insured. See Ætna Casualty Co. v. Phœnix Co., 285 U. S. 209, 214.

These broad rules govern the relative rights of insured and insurer under a valued policy of hull insurance, with the qualification that in the case of a valued policy the value of the hull is to be taken at the figure set in the policy rather than at actual value. In a valued policy the parties have made an agreement on the value of the property covered, in effect stipulating what the damages are to be in the event of total loss. Except for cases of fraudulent overvaluation, the agreed valuation is conclusive on both in respect to rights and duties arising from the policy. Marine Ins. Co. v. Hodgson, 6 Cranch 206; The Potomac, 105 U. S. 630, 635; International Navigation Co. v. Atlantic Mutual Ins. Co., 100 Fed. 304 (D. C. N. Y.); Providence & Stonington S. S. Co. v. Phenix Ins. Co., 89 N. Y. 559, 564-565. In [fol. 104] suit on the policy the insured may not prove a higher actual value, the insurer may not prove a lower. It follows that if the owner of a vessel has already collected damages from one responsible for the loss and later takes action against an insurer which has insured the hull under a valued policy, the owner may hold the insurer for no more

than the excess of the agreed value over the net amount already in hand. His suit is for the agreed value, but he must credit the insurer with the net proceeds of his collection from the party who caused the loss. See Arnold on Marine Insurance, Section 1229. Goole & Hull Steam Towing Co. v. Ocean Marine Ins. Co. (1928) 1 K. B. 589, is an instance. The insured vessel was damaged in collision to the extent of 5,000 £. The owner recovered 2,500 £ from the other vessel, and then brought suit on a hull policy wherein an agreed value of 4,000 £ was placed on the vessel. The owner conceived that he should recover 2,500 £, the difference between actual loss and the collection from the other vessel. It was held, however, that the insurer was liable only for 1,500 £, the difference between agreed valuation and the collection from the other vessel. The case was decided on general principles of marine insurance, not on any provisions in the Marine Insurance Act. So in the present case if the sequence of events had been that the owner of the "Almirante" first collected a net sum of $1,461.668.49 from the United States for loss of the vessel and then brought suit against hull insurers on policies in which the agreed value of the vessel was $632,610, no recovery against the insurers would stand.

By like reasoning it has become the accepted rule that where the hull insurer has first paid the value agreed on in [fol. 105] the policy and the owner later recovers a sum from a third person whose negligence caused or contributed to the loss, the insurer may recoup the net sum so recovered, up to the full amount of the payment under the policy. The rule applies whether the net sum recovered from the third person is smaller or greater than the sum received from the insurer on agreed valuation. If the net sum recovered from the offender is less than the amount already paid by the insurer as agreed value, the insurer will be beneficially entitled to the entire net sum recovered, to the exclusion of the insured. The St. Johns, 101 Fed. 469 (D. C. N. Y.); Federal Ins. Co. v. Detroit Fire & Marine Ins. Co., 202 Fed, 648, 651 (C. C. A. 6); North of England Ins. Ass'n v. Armstrong, L. R. 5 Q. B. 244; Thames & Mersey Marine Ins. Co. v. British & Chilian S. S. Co. (1915) 2 K. B. 214, affirmed (1916) 1 K. B. 30; Egan v. British & Foreign Marine Ins. Co., 193 Ill. 295. See also Arnold on Marine Insurance, Sections 1229-1230. If the insured by his suit against the per-

son responsible for his loss collects a net fund greater than the amount which the insurer has already paid as agreed value, the insured is bound to turn over to the insurer a sum equal to the amount paid by the insurer, without deduction of anything for expenses, and may keep only what is left. That was the precise situation in The Livingstone, 130 Fed. 746 (C. C. A. 2). There the insurer had paid to the owner of a vessel totally lost the sum of $25,000, the value agreed on in the policy. The owner later recovered from the vessel at fault $37,500 as the actual value of the vessel. The district court decided that the insurer was entitled to the whole [fol. 106] fund. The Circuit Court of Appeals held, however, that the insurer was entitled only to $25,000, the amount which it had paid out. The record in the Livingstone case shows that on appeal the insured sought to have the insurer charged with part of the expenses of the suit, but the decision was that the insurer should have the $25,000 without deduction,—full reimbursement but no profit. "We conclude, therefore, that the insurance companies, having paid the full amount stipulated in the policies, are entitled to recoup that sum, and that neither the abandonment nor the subrogation permits them to appropriate the balance recovered from the wrongdoer" (p. 749).

The defendant urges that the decision in The Livingstone was due to the peculiar circumstances present in that case. The fact is, however, that The Livingstone decision rested on broad grounds; the result could not have been different without departure from settled rules relative to valued policies of hull insurance.

In the present case the defendant finally recovered from the owner of the vessel at fault in the collision a sum far beyond the amount which it had received from the insurers as the full value of the vessel agreed on in the policies. After payment of all expenses incurred in recovery, the defendant still had a fund more than double the agreed value. It was accordingly bound to pay over to the insurers amounts equal to those which it had received from them as payments under the valued policies, and there was no warrant for charging any part of the legal expenses against the insurers. In other words, the defendant should have paid to Ætna Insurance Company $18,978 instead of $16,845.24, to Boston Insurance Company $15,815 instead

[fol. 107] of $14,037.71, and to Union Marine and General Insurance Company $6,326 instead of $5,615.08.

The defendant protests that this result will violate the rule that the insured is to be completely reimbursed before the insurer takes anything by subrogation. But in cases of total loss under a hull policy the insured is rarely reimbursed for his actual loss where the policy is a valued one, and the reason is that he has made an agreement on value with his insurers. This protest, as well as the argument that the insured should be treated as constructive co-insurer for the excess of actual value over agreed value, is answered by Judge Addison Brown in The St. Johns, supra.

There remains the plaintiffs' demand for interest. They claim that under subrogation they ought to have interest on their payments from 1918 on, pointing out that in The Livingstone, supra, the insurer was allowed interest from the time of its payment under the policy. In the Livingstone case the insured had recovered interest as part of the relief given against the offending vessel; consequently the insurer was held entitled to interest by subrogation. Here the defendant took nothing by way of interest. It got no redress as to that element of its loss. As to interest it held nothing as trustee for the plaintiffs, and their right of subrogation gives them nothing. See Standard Marine Ins. Co. v. Scottish Metropolitan Assn. Co., 283 U. S. 284, 288. The interest allowed will be only on the unpaid balances from 1932 on. That much the plaintiffs ought to have, for the defendant should have reimbursed them in full at that time and has since had the use of their money.

There will be a verdict directed for the plaintiffs. Ætna [fol. 108] Insurance Company will have a verdict for $2,132.76, Boston Insurance Company for $1,777.29, Union Marine and General Insurance Company for $710.92, each figure to carry interest from November 28, 1932.

December 11, 1936.

Robert P. Patterson, United States District Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

EXTRACT OF THE MINUTES IN ÆTNA INSURANCE COMPANY ACTION—October 30, 1936

Now comes the Plaintiff by Bigham, Englar, Jones & [fol. 109] Houston, D. R. Englar of counsel, and moves the trial of this cause. Likewise comes the Defendant by Kirlin, Campbell, Hickox, Keating & McGrann, C. Keating and R. Sullivan, counsel. Counsels stipulate to try case with jury of one. Thereupon a juror is duly sworn, and the cause proceeds to Trial with Law 57-272 and Law 57-273. Counsel for plaintiff opens to the Court. Counsel for defendant opens to the Court. Witness called on behalf of plaintiff. Plaintiff rests and moves for direction of a verdict. Defendant rests and moves for direction of a verdict dismissing bill with costs. Case argued. Decision reserved.

On December 12, 1936, the Court rendered its decision directing a verdict in favor of the plaintiff for $2,132.76 with interest from November 28, 1932.

Charles Weiser, Clerk.

[fol. 110] IN UNITED STATES DISTRICT COURT

[Title omitted]

EXTRACT OF THE MINUTES IN UNION MARINE, ETC., ACTION—October 30, 1936

Now comes the Plaintiff by Bigham, Englar, Jones & Houston, D. R. Englar of counsel, and moves the trial of this cause. Likewise comes the Defendant by Kirlin, Campbell, Hickox, Keating & McGrann, C. Keating and R. Sullivan, counsel. Counsels stipulate to try case with jury of one. Thereupon a juror is duly sworn, and the cause proceeds to Trial with Law 57-271 and Law 57-273. Counsel for plaintiff opens to the Court. Counsel for defendant opens to the Court. Witness called on behalf of plaintiff. Plaintiff rests [fol. 111] and moves for direction of a verdict. Defendant rests and moves for direction of a verdict dismissing bill with costs. Case argued. Decision reserved.

On December 12, 1936, the Court rendered its decision directing a verdict in favor of the plaintiff for $710.92, with interest from November 28, 1932.

Charles Weiser, Clerk.

In United States District Court

[Title omitted]

Extract of the Minutes in Boston Insurance Company Action—October 30, 1936

Now comes the plaintiff by Bigham, Englar, Jones & [fol. 112] Houston, D. R. Englar of counsel, and moves the trial of this cause. Likewise comes the Defendant by Kirlin, Campbell, Hickox, Keating & McGrann, C. Keating and R. Sullivan, counsel. Counsels stipulate to try case with jury of one. Thereupon a juror is duly sworn, and the cause proceeds to Trial with Law 57-271 and Law 57-272. Counsel for plaintiff opens to the Court. Counsel for defendant opens to the Court. Witness called on behalf of plaintiff. Plaintiff rests and moves for direction of a verdict. Defendant rests and moves for direction of a verdict dismissing bill with costs. Case argued. Decision reserved.

On December 12, 1936, the Court rendered its decision directing a verdict in favor of the plaintiff for $1,777.29 with interest from November 28, 1932.

Charles Weiser, Clerk.

[fol. 113] In United States District Court, Southern District of New York

L 57-271

Ætna Insurance Company, Plaintiff,

against

United Fruit Company, Defendant

Judgment

The issues joined in this action having regularly come on for trial at a stated term of this court on the 30th day of October, 1936, before the Honorable Robert P. Patterson,

United States District Judge, and a jury of one, and the plaintiff appearing by its attorneys, Bigham, Englar, Jones & Houston, and the defendant appearing by its attorneys, Kirlin, Campbell, Hickox, Keating & McGrann, and the allegations and proofs of both sides having been heard and considered, and at the close of the case both sides having moved for direction of a verdict, and after due deliberation the Court having directed a verdict in favor of the plaintiff, Aetna Insurance Company, for $2,132.76, with interest from November 28, 1932, and the costs of the said plaintiff having been duly taxed at $102.35, now it is

Ordered and adjudged that the plaintiff, Aetna Insurance Company, 89 Maiden Lane, Borough of Manhattan, New [fol. 114] York City, do recover of the defendant United Fruit Company, Pier 3, North River, Borough of Manhattan, New York City, the sum of $2,132.76, with interest from November 28, 1932, to date, amounting to $547.40 together with $102.35 costs and disbursements, amounting in all to the sum of $2,782.51, and that the plaintiff have execution therefor.

Judgment entered this 10th day of March, 1937.

Charles Weiser, Clerk.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION AND ORDER ALLOWING APPEAL OF ÆTNA INSURANCE COMPANY

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The above-named plaintiff, the Aetna Insurance Com- [fol. 115] pany, feeling aggrieved by the judgment of the District Court of the United States for the Southern District of New York, entered herein on the 10th day of March 1937, hereby appeals from said judgment to the United States Circuit Court of Appeals for the Second Circuit, and prays that said appeal be allowed for the reasons specified in the assignment of errors filed with this petition, and also prays for an order allowing petitioner to prosecute said appeal, and that a transcript of the record, papers and proceedings on which the said judgment was made, may be duly

authenticated and sent to the United States Circuit Court of Appeals for the Second Circuit; and that a citation be issued as directed by law.

Dated, New York, April 3, 1937.

Bigham, Englar, Jones & Houston, Attorneys for Petitioner-Plaintiff, 99 John Street, New York, N. Y.

The above appeal is hereby allowed.

Dated, New York, April 3, 1937.

Alfred C. Coxe, U. S. D. J.

[fol. 116] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL OF ÆTNA INSURANCE COMPANY

SIRS:

Please take notice that the plaintiff above named, Aetna Insurance Company, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the judgment entered herein in the Office of the Clerk of the United States District Court for the Southern District of New York on the 10th day of March, 1937, in favor of the said plaintiff and against the defendant in the sum of $2,782.51; and the said plaintiff appeals from each and every part of said judgment, as well as from the whole thereof.

Dated, New York, April 3, 1937.

Yours, &c., Bigham, Englar, Jones & Houston, Attorneys for Plaintiff, 99 John Street, New York, N. Y.

To Messrs. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, 120 Broadway, New York, N. Y.

[fol. 117] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS OF ÆTNA INSURANCE COMPANY

Now comes the plaintiff, Ætna Insurance Company, by Bigham, Englar, Jones & Houston, its attorneys, and files the following assignment of errors:

1. The Court erred in directing a verdict in favor of the plaintiff for only $2,132.76, with interest only from November 28, 1932.

2. The Court erred in not directing a verdict in favor of the plaintiff for such proportion of the entire net recovery from the Government in the collision suit as the sum insured by plaintiff, and paid to defendant by plaintiff, bears to the agreed valuation of the S.S. "Almirante" as fixed by the policy issued by plaintiff to defendant.

3. The Court erred in not directing a verdict in favor of the plaintiff for the full amount of its proportionate share in the entire net recovery of $1,461,668.49, namely, $43,850.04, less $16,845.24, which plaintiff has already received, or a net amount of $27,004.80, together with interest [fol. 118] from November 28, 1932 on said unpaid balance of $27,004.80.

4. The Court erred in not directing a verdict in favor of plaintiff for at least an amount which, added to the payment it has already received, would constitute full and complete reimbursement in respect of plaintiff's loss, namely, the repayment of the sum of $18,978.00 made by plaintiff to defendant on December 5, 1918, plus interest from that date for the period during which plaintiff was deprived of the use of this sum, less the $16,845.24 received by plaintiff on November 28, 1932.

5. The Court erred in refusing to direct a verdict in favor of the plaintiff for at least the full amount of its payment in 1916, namely, $18,978.00, with interest thereon from December 5, 1918, less the amount received by plaintiff in 1932, namely, $16,845.24, together with interest on $2,132.76 from November 28, 1932.

6. The Court erred in denying plaintiff's motion to set aside the verdict directed in favor of plaintiff for $2,132.76 with interest from November 28, 1932, on the ground that it was contrary to law.

7. The Court erred in denying plaintiff's motion to set aside the verdict directed in favor of plaintiff for $2,132.76 with interest from November 28, 1932, on the ground that it was contrary to the evidence.

Wherefore, plaintiff prays that the judgment of the United States District Court for the Southern District of [fols. 119-120] New York be reversed, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, April 2, 1937.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiff, 99 John Street, New York, N. Y.

Citation of Ætna Insurance Company omitted in printing.

[fol. 121] In United States District Court

L 57-271

[Title omitted]

Petition and Order Allowing Appeal of United Fruit Company

The defendant, United Fruit Company, being aggrieved by the decision and judgment of the District Court of the Southern District of New York, which judgment was entered herein in the office of the Clerk of this Court on the 10th day of March, 1937 in favor of the plaintiff in the sum of $2,782.51, hereby prays that an appeal be allowed to the United States Circuit Court of Appeals for the Second Circuit.

Dated, New York, April 19, 1937.

United Fruit Company, by Kirlin, Campbell, Hickox, Keating & McGrann, its Attorneys, by Cletus Keating.

[fol. 122] Allowance of Appeal

Upon the foregoing petition, it is

Ordered that the appeal herein prayed for by the defendant, United Fruit Company, be and the same hereby is allowed.

Dated, New York, April 22nd, 1937.

Robert P. Patterson, U. S. D. J.

IN UNITED STATES DISTRICT COURT

L 57-271

[Title omitted]

NOTICE OF APPEAL OF UNITED FRUIT COMPANY

Please take notice that the defendant, United Fruit Company, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, to be held in the Court Rooms in the United States Court House, Borough of Manhattan, City of New York, from the judgment entered herein on the 10th day of March, 1937, in favor of the plaintiff in the sum of $2,782.51 and against the defendant, and from [fol. 123] each and every part of said judgment as well as the whole thereof.

Dated, New York, April 19, 1937.

Yours, etc., Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, Office and Post Office Address, 120 Broadway, Borough of Manhattan, City of New York.

To Bigham, Englar, Jones & Houston, Esqs., Attorneys for Plaintiff, 39 John Street, Borough of Manhattan, City of New York. Charles Weiser, Esq., Clerk.

[fol. 124] IN UNITED STATES DISTRICT COURT

L 57-271

[Title omitted]

ASSIGNMENT OF ERRORS OF UNITED FRUIT COMPANY

Now comes the defendant United Fruit Company, by Kirlin, Campbell, Hickox, Keating & McGrann, its attorneys, and files the following assignment of errors:

1. The Court erred in directing a verdict in favor of the plaintiff for $2,132.76, with interest from November 28, 1932.

2. The Court erred in not directing a verdict in favor of the defendant dismissing the complaint.

3. The verdict returned on the decision of the Trial Court is contrary to the evidence submitted on the trial of the said cause and is not supported by it.

4. The judgment entered by the Trial Court on the verdict is contrary to the evidence submitted upon the trial and is erroneous in law.

[fol. 125] 5. The Court erred in denying defendant's motion to set aside the verdict directed in favor of plaintiff for $2,132.76, with interest from November 28, 1932, on the ground that it was contrary to the evidence.

6. The Court erred in denying defendant's motion to set aside the verdict directed in favor of plaintiff for $2,132.76, with interest from November 28, 1932, on the ground that it was contrary to law.

7. The Court erred as a matter of law in holding that underwriters are entitled by subrogation to recover from insured a proportionate share of recovery without any deduction for legal expenses.

Wherefore defendant prays that the judgment of the United States District Court for the Southern District of New York in said cause be reversed.

Dated New York, April 19, 1937.

Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, 120 Broadway, New York, N. Y.

[fol. 126] Citation of United Fruit Company omitted in printing.

[fol. 127] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

L 57-272

UNION MARINE AND GENERAL INSURANCE COMPANY, LIMITED, Formerly Union Marine Insurance Company, Limited, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant.

JUDGMENT

The issues joined in this action having regularly come on for trial at a stated term of this court on the 30th day of October, 1936, before the Honorable Robert P. Patterson, United States District Judge, and a jury of one, and the plaintiff appearing by its attorneys, Bigham, Englar, Jones & Houston, and the defendant appearing by its attorneys, Kirlin, Campbell, Hickox, Keating & McGrann, and the allegations and proofs of both sides having been heard and considered, and at the close of the case both sides having moved for direction of a verdict, and after due deliberation the Court having directed a verdict in favor of the plaintiff, Union Marine and General Insurance Company, Limited, for $710.92, with interest from November 28, 1932, and the costs of the said plaintiff having been duly taxed at $32.30, now it is

Ordered and adjudged that the plaintiff, Union Marine and General Insurance Company, Limited, formerly Union Marine Insurance Company, Limited, 116 John Street, Borough of Manhattan, New York City, do recover of the de- [fol. 128] fendant United Fruit Company, Pier 3, North River, Borough of Manhattan, New York City, the sum of $710.92, with interest from November 28, 1932, to date, amounting to $182.46, together with $32.30 costs and disbursements, amounting in all to the sum of $925.68, and that the plaintiff have execution therefor.

Judgment entered this 10th day of March, 1937.

Charles Weiser, Clerk.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION AND ORDER ALLOWING APPEAL OF UNION MARINE, ETC.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The above-named plaintiff, Union Marine and General Insurance Company, Limited, formerly Union Marine In-
[fol. 129] surance Company, Limited, feeling aggrieved by the judgment of the District Court of the United States for the Southern District of New York, entered herein on the 10th day of March, 1937, hereby appeals from said judgment to the United States Circuit Court of Appeals for the Second Circuit, and prays that said appeal be allowed for the reasons specified in the assignment of errors filed with this petition, and also prays for an order allowing petitioner to prosecute said appeal, and that a transcript of the record, papers and proceedings on which the said judgment was made, may be duly authenticated and sent to the United States Circuit Court of Appeals for the Second Circuit; and that a citation be issued as directed by law.

Dated, New York, April 3, 1937.

Bigham, Englar, Jones & Houston, Attorneys for Petitioner-Plaintiff, 99 John Street, New York, N. Y.

The above appeal is hereby allowed.

Dated, New York, April 3, 1937.

Alfred C. Coxe, U. S. D. J.

[fol. 130] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL OF UNION MARINE, ETC.

SIRS:

Please take notice that the plaintiff above named, Union Marine and General Insurance Company, Limited, formerly Union Marine Insurance Company, Limited, hereby appeals

to the United States Circuit Court of Appeals for the Second Circuit from the judgment entered herein in the Office of the Clerk of the United States District Court for the Southern District of New York on the 10th day of March, 1937, in favor of the said plaintiff and against the defendant in the sum of $925.68; and the said plaintiff appeals from each and every part of said judgment, as well as from the whole thereof.

Dated, New York, April 3, 1937.

Yours, &c., Bigham, Englar, Jones & Houston, Attorneys for Plaintiff, 99 John Street, New York, N. Y.

To Messrs. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, 120 Broadway, New York, N. Y.

[fol. 131] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS OF UNION MARINE, ETC.

Now comes the plaintiff, Union Marine and General Insurance Company, Limited, formerly Union Marine Insurance Company, Limited, by Bigham, Englar, Jones & Houston, its Attorneys, and files the following assignment of errors:

1. The Court erred in directing a verdict in favor of the plaintiff for only $710.92, with interest only from November 28, 1932.

2. The Court erred in not directing a verdict in favor of the plaintiff for such proportion of the entire net recovery from the Government in the collision suit as the sum insured by plaintiff, and paid to defendant by plaintiff, bears to the agreed valuation of the S. S. "Almirante" as fixed by the policy issued by plaintiff to defendant.

3. The Court erred in not directing a verdict in favor of the plaintiff for the full amount of its proportionate share in the entire net recovery of $1,461,668.49, namely, $14,-
[fol. 132] 616.68, less $5,615.08, which plaintiff has already received, or a net amount of $9,001.60, together with inter-

est from November 28, 1932 on said unpaid balance of $9,001.60.

4. The Court erred in not directing a verdict in favor of plaintiff for at least an amount which, added to the payment it has already received, would constitute full and complete reimbursement in respect of plaintiff's loss, namely, the repayment of the sum of $6,326.00 made by plaintiff to defendant on January 2, 1919, plus interest from that date for the period during which plaintiff was deprived of the use of this sum, less the $5,615.08 received by plaintiff on November 28, 1932.

5. The Court erred in refusing to direct a verdict in favor of the plaintiff for at least the full amount of its payment in 1919, namely, $6,326.00, with interest thereon from January 2, 1919, less the amount received by plaintiff in 1932, namely, $5,615.08, together with interest on $710.92 from November 28, 1932.

6. The Court erred in denying plaintiff's motion to set aside the verdict directed in favor of plaintiff for $710.92 with interest from November 28, 1932, on the ground that it was contrary to law.

7. The Court erred in denying plaintiff's motion to set aside the verdict directed in favor of plaintiff for $710.92 with interest from November 28, 1932, on the ground that it was contrary to the evidence.

[fols. 133-134] Wherefore, plaintiff prays that the judgment of the United States District Court for the Southern District of New York to be reversed, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, April 2, 1937.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiff, 99 John Street, New York, N. Y.

Citation of Union Marine, etc., omitted in printing.

[fol. 135] IN UNITED STATES DISTRICT COURT

L 57-272

[Title omitted]

PETITION AND ORDER ALLOWING APPEAL OF UNITED FRUIT COMPANY

The defendant, United Fruit Company, being aggrieved by the decision and judgment of the District Court of the Southern District of New York, which judgment was entered herein in the office of the Clerk of this Court on the 10th day of March, 1937 in favor of the plaintiff in the sum of $925.68, hereby prays that an appeal be allowed to the United States Circuit Court of Appeals for the Second Circuit.

Dated, New York, April 19, 1937.

United Fruit Company, by Kirlin, Campbell, Hickox, Keating & McGrann, Its Attorneys, by Cletus Keating.

[fol. 136] ALLOWANCE OF APPEAL

Upon the foregoing petition, it is

Ordered that the appeal herein prayed for by the defendant, United Fruit Company, be and the same hereby is allowed.

Dated, New York, April 22nd, 1937.

Robert P. Patterson, U. S. D. J.

IN UNITED STATES DISTRICT COURT

L 57-272

[Title omitted]

NOTICE OF APPEAL OF UNITED FRUIT COMPANY

SIRS:

Please take notice that the defendant, United Fruit Company, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, to be held in the Court

Rooms in the United States Court House, Borough of Man-
[fol. 137] hattan, City of New York, from the judgment entered herein on the 10th day of March, 1937, in favor of the plaintiff in the sum of $925.68 and against the defendant, and from each and every part of said judgment as well as the whole thereof.

Dated, New York, April 19, 1937.

Yours, etc., Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, Office and Post Office Address, 120 Broadway, Borough of Manhattan, City of New York.

To Bigham, Englar, Jones & Houston, Esqs., Attorneys for Plaintiff, 99 John Street, Borough of Manhattan, City of New York. Charles Weiser, Esq., Clerk.

[fol. 138] In United States District Court

L 57-272

[Title omitted]

Assignment of Errors of United Fruit Company

Now comes the defendant United Fruit Company, by Kirlin, Campbell, Hickox, Keating & McGrann, its attorneys, and files the following assignment of errors:

1. The Court erred in directing a verdict in favor of the plaintiff for $710.92, with interest from November 28, 1932.

2. The Court erred in not directing a verdict in favor of the defendant dismissing the complaint.

3. The verdict returned on the decision of the Trial Court is contrary to the evidence submitted on the trial of the said cause and is not supported by it.

4. The judgment entered by the Trial Court on the verdict is contrary to the evidence submitted upon the trial and is erroneous in law.

[fol. 139] 5. The Court erred in denying defendant's motion to set aside the verdict directed in favor of plaintiff for $710.92, with interest from November 28, 1932, on the ground that it was contrary to the evidence.

6. The Court erred in denying defendant's motion to set aside the verdict directed in favor of plaintiff for $710.92, with interest from November 28, 1932, on the ground that it was contrary to law.

7. The Court erred as a matter of law in holding that underwriters are entitled by subrogation to recover from insured a proportionate share of recovery without any deduction for legal expenses.

Wherefore defendant prays that the judgment of the United States District Court for the Southern District of New York in said cause be reversed.

Dated, New York, April 19th, 1937.

Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, 120 Broadway, New York, N. Y.

[fol. 140] Citation of United Fruit Company omitted in printing.

[fol. 141] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

L 57-273

BOSTON INSURANCE COMPANY, Plaintiff,

against

UNITED FRUIT COMPANY, Defendant

JUDGMENT

The issues joined in this action having regularly come on for trial at a stated term of this court on the 30th day of October, 1936, before the Honorable Robert P. Patterson, United States District Judge, and a jury of one, and the plaintiff appearing by its attorneys, Bigham, Englar, Jones & Houston, and the defendant appearing by its attorneys, Kirlin, Campbell, Hickox, Keating & McGrann, and the allegations and proofs of both sides having been heard and considered, and at the close of the case both sides having moved for direction of a verdict, and after due deliberation the Court having directed a verdict in favor of the plaintiff Boston Insurance Company, for $1,777.29, with interest

from November 28, 1932, and the costs of the said plaintiff having been duly taxed at $32.50, now it is

Ordered and adjudged that the plaintiff Boston Insurance Company, 90 John Street, Borough of Manhattan, New York City, do recover of the defendant United Fruit [fol. 142] Company, Pier 3 North River, Borough of Manhattan, New York City, the sum of $1,777.29, with interest from November 28, 1932, to date, amounting to $456.17 together with $32.50 costs and disbursements amounting in all to the sum of $2,265.96, and that the plaintiff have execution therefor.

Judgment entered this 10th day of March, 1937.

Charles Weiser, Clerk.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION AND ORDER ALLOWING APPEAL OF BOSTON INSURANCE COMPANY

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The above-named plaintiff, the Boston Insurance Company, feeling aggrieved by the judgment of the District [fol. 143] Court of the United States for the Southern District of New York, entered herein on the 10th day of March 1937, hereby appeals from said judgment to the United States Circuit Court of Appeals for the Second Circuit, and prays that said appeal be allowed for the reasons specified in the assignment of errors filed with this petition, and also prays for an order allowing petitioner to prosecute said appeal, and that a transcript of the record, papers and proceedings on which the said judgment was made, may be duly authenticated and sent to the United States Circuit Court of Appeals for the Second Circuit; and that a citation be issued as directed by law.

Dated, New York, April 3, 1937.

Bigham, Englar, Jones & Houston, Attorneys for Petitioner-Plaintiff, 99 John Street, New York, N. Y.

The above appeal is hereby allowed.

Dated, New York, April 3rd, 1937.

Alfred C. Coxe, U. S. D. J.

[fol. 144] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL OF BOSTON INSURANCE COMPANY

SIRS:

Please take notice that the plaintiff above named, Boston Insurance Company, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the judgment entered herein in the Office of the Clerk of the United States District Court for the Southern District of New York on the 10th day of March, 1937, in favor of the said plaintiff and against the defendant in the sum of $2,265.96; and the said plaintiff appeals from each and every part of said judgment, as well as from the whole thereof.

Dated, New York, April 3, 1937.

Yours, &c., Bigham, Englar, Jones & Houston, Attorneys for Plaintiff, 99 John Street, New York, N. Y.

[fol. 145] To Messrs Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, 120 Broadway, New York, N. Y.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS OF BOSTON INSURANCE COMPANY

Now comes the plaintiff, Boston Insurance Company, by Bigham, Englar, Jones & Houston, its Attorneys, and files the following assignment of errors:

1. The Court erred in directing a verdict in favor of the plaintiff for only $1,777.29, with interest only from November 28, 1932.

2. The Court erred in not directing a verdict in favor of the plaintiff for such proportion of the entire net recovery [fol. 146] from the Government in the collision suit as the sum insured by plaintiff, and paid to defendant by plaintiff, bears to the agreed valuation of the S. S. "Almirante" as fixed by the policy issued by plaintiff to defendant.

3. The Court erred in not directing a verdict in favor of the plaintiff for the full amount of its proportionate share in the entire net recovery of $1,461,668.49, namely, $36,-541.71, less $14,037.71, which plaintiff has already received, or a net amount of $22,504.00, together with interest from November 28, 1932 on said unpaid balance of $22,504.00.

4. The Court erred in not directing a verdict in favor of plaintiff for at least an amount which, added to the payment it has already received, would constitute full and complete reimbursement in respect of plaintiff's loss, namely, the repayment of the sum of $15,815.00 made by plaintiff to defendant on December 16, 1918, plus interest from that date for the period during which plaintiff was deprived of the use of this sum, less the $14,037.71 received by plaintiff on November 28, 1932.

5. The Court erred in refusing to direct a verdict in favor of the plaintiff for at least the full amount of its payment in 1918, namely, $15,815.00, with interest thereon from December 16, 1918, less the amount received by plaintiff in 1932, namely, $14,037.71, together with interest on $1,777.29 from November 28, 1932.

6. The Court erred in denying plaintiff's motion to set aside the verdict directed in favor of plaintiff for $1,777.29 [fol. 147] with interest from November 28, 1932, on the ground that it was contrary to law.

7. The Court erred in denying plaintiff's motion to set aside the verdict directed in favor of plaintiff for $1,777.29 with interest from November 28, 1932, on the ground that it was contrary to the evidence.

Wherefore, plaintiff prays that the judgment of the United States District Court for the Southern District of New York be reversed, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, April 2, 1937.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiff, 99 John Street, New York, N. Y.

[fol. 148] Citation of Boston Insurance Company omitted in printing.

[fol. 149] IN UNITED STATES DISTRICT COURT

L 57-273

[Title omitted]

PETITION AND ORDER ALLOWING APPEAL OF UNITED FRUIT COMPANY

The defendant, United Fruit Company, being aggrieved by the decision and judgment of the District Court of the Southern District of New York, which judgment was entered herein in the office of the Clerk of this Court on the 10th day of March, 1937 in favor of the plaintiff in the sum of $2,265.96, hereby prays that an appeal be allowed to the [fol. 150] United States Circuit Court of Appeals for the Second Circuit.

Dated, New York, April 19, 1937.

United Fruit Company, by Kirlin, Campbell, Hickox, Keating & McGrann, Its Attorneys. By Cletus Keating.

ALLOWANCE OF APPEAL

Upon the foregoing petition, it is

Ordered that the appeal herein prayed for by the defendant, United Fruit Company, be and the same hereby is allowed.

Dated, New York, April 22nd, 1937.

Robert P. Patterson, U. S. D. J.

[fol. 151] IN UNITED STATES DISTRICT COURT

L 57-273

[Title omitted]

NOTICE OF APPEAL OF UNITED FRUIT COMPANY

SIRS:

Please take notice that the defendant, United Fruit Company, hereby appeals to the United States Circuit Court

of Appeals for the Second Circuit, to be held in the Court Rooms in the United States Court House, Borough of Manhattan, City of New York, from the judgment entered herein on the 10th day of March, 1937, in favor of the plaintiff in the sum of $2,265.96 and against the defendant, and from each and every part of said judgment as well as the whole thereof.

Dated, New York, April 19, 1937.

Yours, etc., Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, Office and Post Office Address, 120 Broadway, Borough of Manhattan, City of New York.

[fol. 152] To Bigham, Englar, Jones & Houston, Esqs., Attorneys for Plaintiff, 99 John Street, Borough of Manhattan, City of New York. Charles Weiser, Esq., Clerk.

IN UNITED STATES DISTRICT COURT

L 57-273

[Title omitted]

ASSIGNMENT OF ERRORS OF UNITED FRUIT COMPANY

Now comes the defendant United Fruit Company, by Kirlin, Campbell, Hickox, Keating & McGrann, its attorneys, and files the following assignment of errors:

1. The Court erred in directing a verdict in favor of the plaintiff for $1,777.29, with interest from November 28, 1932.

2. The Court erred in not directing a verdict in favor of the defendant dismissing the complaint.

[fol. 153] 3. The verdict returned on the decision of the Trial Court is contrary to the evidence submitted on the trial of the said cause and is not supported by it.

4. The judgment entered by the Trial Court on the verdict is contrary to the evidence submitted upon the trial and is erroneous in law.

5. The Court erred in denying defendant's motion to set aside the verdict directed in favor of plaintiff for

$1,777.29, with interest from November 28, 1932, on the ground that it was contrary to the evidence.

6. The Court erred in denying defendant's motion to set aside the verdict directed in favor of plaintiff for $1,777.29, with interest from November 28, 1932, on the ground that it was contrary to law.

7. The Court erred as a matter of law in holding that underwriters are entitled by subrogation to recover from insured a proportionate share of recovery without any deduction for legal expenses.

Wherefore defendant prays that the judgment of the United States District Court for the Southern District of New York in said cause be reversed.

Dated, New York, April 19th, 1937.

Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, 120 Broadway, New York, N. Y.

[fol. 154] Citation of United Fruit Company omitted in printing.

[fol. 155] IN UNITED STATES DISTRICT COURT

L 57—271, L 57—272, L 57—273

[Titles omitted]

STIPULATION AS TO EXHIBITS

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the fol-
[fol. 156] lowing exhibits may be omitted from the record on appeal herein; that the same may be used by either party on the argument of this appeal and may be handed up to the Court by either party on said argument:

Exhibits 1, 2, 3 and 4 annexed to Plaintiffs' Exhibit #2. (Same as Exhibits 1, 2, 3 and 4 annexed to Plaintiffs' Exhibit #1.)

Exhibits 1, 2, 3 and 4 annexed to Plaintiffs' Exhibit #4. (Same as Exhibits 1, 2, 3 and 4 annexed to Plaintiffs' Exhibit #1.)

Plaintiffs' Exhibit #9. Recovery Statement.
Plaintiffs' Exhibit #11—Edwards v. Motor Union, 1922, 2 K. B. D. 249.

Dated, New York, June 17, 1937.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiffs-Appellants and Appellees. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant-Appellee and Appellant.

[fol. 157] IN UNITED STATES DISTRICT COURT

L 57—271, L 57—272, L 57—273

[Titles omitted]

STIPULATION AND ORDER SETTLING AND FILING BILL OF EXCEPTIONS

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the fore-
[fol. 158] going contains all the testimony and exhibits material to the appeal herein, except as shown in the stipulation at folios 463-8, and that the same may be settled and ordered on file as the bill of exceptions herein.

Dated, New York, June 17, 1937.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiffs-Appellants and Appellees. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant-Appellee and Appellant.

So ordered. Robert P. Patterson, U. S. District Judge.

June 23, 1937.

[fol. 159] IN UNITED STATES DISTRICT COURT

L 57—271, L 57—272, L 57—273

[Titles omitted]

STIPULATION AS TO RECORD

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court

[fol. 160] in the above-entitled matter as agreed upon by the parties.

Dated, New York, June 17, 1937.

Bigham, Englar, Jones & Houston, Attorneys for Plaintiffs-Appellants and Appellees. Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant-Appellee and Appellant.

[fols. 161-162] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 163] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1937

Argued Oct. 19, 1937. Decided Nov. 8, 1937

Nos. 50–52

ÆTNA INSURANCE COMPANY, Plaintiff-Appellant-Appellee,

v.

UNITED FRUIT COMPANY, Defendant-Appellee-Appellant

UNION MARINE & GENERAL INSURANCE CO., LTD., Formerly Union Marine Insurance Company, Ltd., Plaintiff-Appellant-Appellee,

v.

UNITED FRUIT COMPANY, Defendant-Appellee-Appellant

BOSTON INSURANCE COMPANY, Plaintiff-Appellant-Appellee,

v.

UNITED FRUIT COMPANY, Defendant-Appellee-Appellant

Appeal from the District Court of the United States for the Southern District of New York

Before L. Hand, Swan, and Augustus N. Hand, Circuit Judges

Appeals by both parties from judgments for the plaintiffs in three actions at law for money had and received.

D. Roger Englar, of New York City, for plaintiffs.

Cletus Keating, of New York City, for defendant.

L. HAND, Circuit Judge:

The three actions here on appeal were brought by separate underwriters to recover money received by the insured in payment of a judgment recovered by it in a suit against the United States; they are based upon the theory that the [fol. 164] payment was in the nature of salvage, and was for the account of both underwriters and owner. The question is on what principle it should be divided. The facts are as

follows. In 1918 the three plaintiffs, with a number of other underwriters, issued "valued hull" policies upon the defendant's ship, "Almirante"; the agreed value was $632,610—known at the time to be far less than the actual value of the ship;—the total insurance was $582,002.25, divided about equally between American and English insurers. Thus the defendant was a coinsurer for about $50,000, and was in addition undercovered in the event of a total loss. To protect itself again the second risk, it took out additional English hull insurance, "P. P. I." (Policy Proof of Interest) amounting to $141,614, and other English "P. P. I." policies not strictly hull insurance, but upon losses incidental to the total loss of the ship. All these "P. P. I." policies created no obligation; they were "honor" policies, payable only at the pleasure of the insurer, and they expressly surrendered all rights of subrogation. On Sept. 19, 1918, the "Almirante" was sunk and became a total loss as the result of a collision with the S. S. "Hisko," a vessel owned by the United States. The hull underwriters paid the full amount of their coverage to the defendant, and so did the "P. P. I." underwriters. Thereupon both the defendant and the hull underwriters joined in retaining attorneys to pursue the United States for the fault of the "Hisko." They secured the passage of a special act of Congress authorizing a suit, which finally resulted in a judgment for $1,761,693.02, made up of the true value of the "Almirante," $1,750,000, and of her equipment, supplies and the like, $11,693.02. This judgment was paid on July 26, 1932, and the defendant undertook to make distribution of the proceeds. To that end it engaged the well known marine insurance agents, Johnson & Higgins, who prepared a "recovery statement," in which they apportioned the expenses (for the most part the fees of attorneys) between the defendant and the hull underwriters in the proportion of four to one, and allotted to the hull underwriters their original payments less their share of the expenses, but without interest, for the defendant had recovered no interest against the United States. This adjustment the English underwriters accepted, but the Americans protested; first, because they should not have been compelled to bear any part of the expenses of the recovery; and second, because, although they had paid the defendant in 1918, they received no interest for the delay, except what the money had earned after the defendant collected the judgment. Further, though not pressing the point

in this court, they reserved against a possible appeal to the Supreme Court a claim to the whole recovery. The judge felt himself bound by The Livingstone, 130 F. 746 (C. C. A. 2), not to deduct from the plaintiff's recovery any part of the expenses of the suit against the United States, but he thought that the principle of that decision did not extend to the allowance of interest when none had been recovered. Our decision must depend upon the effect to be given to the agreed value in a "valued hull policy." On the one hand the provision might be understood as meaning that in all future relations between owner and underwriter, however arising, the stipulated amount must be taken as the actual value of the ship; on the other hand it might be understood as meaning only that the underwriters should not be called upon to pay more than the agreed amount, and that they should not be free to assert that the vessel was worth less, when sued upon their policies. Some courts have taken the first view as to the hull policies, though none have ever done so either as to cargo policies, or in any but marine insurance.

The plaintiffs admit as much, and stand upon the doctrine as an exception so well established as to be implied in the terms of all hull policies; in addition they defend it in principle. They argue that since the hull underwriter of a "valued" policy must pay all partial losses in full, unlike any other insurer (International Navigation Co. v. Atlantic Mutual Ins. Co. [D. C.] 100 F. 304, 318; Id., 108 F. 987 [C. C. A. 2]; Aitcheson v. Lohre, L. R. 4 App. Cas. 755), he ought not to be obliged to let in the owner as a coïnsurer when there is a total loss. It is true that the rule has become settled in cases of "valued" hull policies that the underwriter pays partial losses in full, and it is also true that consistently with the principles of other insurance he ought not to be so charged. Howeyer, the reason is not that the agreed value is taken as an estoppel, but that partial [fol. 165] losses in the case of hulls commonly result in repairs, the injured hull not being appraised like cargo. Gulf Refining Co. v. Atlantic Mutual Ins. Co., 279 U. S. 708, 713, 49 S. Ct. 439, 73 L. Ed., 914. That this is the real explanation is confirmed by the fact that the rule is not applied even in hull cases when the claim does not result from repairs. Pitman v. Universal Marine Co., L. R. 9 Q. B. D. 192; S. S. "Balmoral" Company v. Marten (1902) App. Cas. 511. The argument does not therefore seem to us con-

vincing. The plaintiffs next argue that when the owner has covered his excess value with "P. P. I." policies not entitled to subrogation, it would be unjust to the hull underwriters if he is allowed to share with them any recovery against tort-feasors. He should not be treated as a coïnsurer as to the excess value in dividing that recovery if he has been indemnified pro tanto by "P. P. I." payments. Indeed, it may well be that such payments should be bought into hotchpot in ascertaining the total amount recovered, and if they and the recovery together cover the loss, the hull underwriters will recoup in full; but if there be a rump left over, they should have no claim upon that; the venture was not theirs and the owner has merely had a windfall, owing to the peculiar nature of the "P. P. I." policies. Finally we are not convinced by the argument of Brown, J. in The St. Johns (D.C.) 101 F. 469, 473, that since in cases of full insurance the hull underwriter is wholly indemnified, the owner should not complain of the same result when he chooses to undervalue his ship and so to save premiums. That reasoning might indeed prevail in cases where the underwriter had been led to suppose that the agreed value was the full value, but that is never the case; at least it was not the case here. When it is not, there can be no inequity in letting in the owner as coinsurer, unless a contrary stipulation is to be implied in the policy; for the underlying understanding in any sort of insurance is that the insured is to be made whole at the insurer's expense; not that the insurer is to be preferred.

As to authorities, North of England Association v. Armstrong, L. R. 5 Q. B. 244 (1870), supports the plaintiffs; supports them even in their claim to the whole recovery, though that point was not actually decided. It held flatly that the agreed value was an estoppel between the parties whenever value became relevant in their legal relations. That result was thought to follow upon the privilege of an underwriter, who has paid a total loss, to take over the wreck, to raise and repair it, and to make such profit from it as he can. Recovery against a tort-feasor stands precisely like the wreck, the court said; it is a substitute for the ship and the underwriter is as much entitled to it. This argument seems to us fallacious. In the first place, the owner often in fact abandons the wreck, though the underwriter's privilege does not in law depend upon it; and so far as we are advised, no case has arisen in which an underwriter has actually profited

out of the wreck, when the owner did not abandon. But assuming that in such a case he might retain any profit, that is irrelevant here. An owner who receives payment of a total loss and who, even though he does not expressly abandon the wreck, allows the underwriter at his own cost to raise and restore it, may well have no equitable claim to any resulting profit. But an owner who, not being covered by his hull insurance, actively prosecutes a right of action against a tort-feasor—especially when, as here, he does it in conjunction with his underwriter—shows as plainly as possible that he means to assert an interest in it, which would be grossly unjust to give to the underwriter after the owner has won. Yet, unless one is prepared to go so far as this, the reasoning of North of England Association v. Armstrong, supra (L. R. 5 Q. B. 244), will not serve, for there is no antecedent ground for saying that the agreed value must be an estoppel for all purposes. Lord Blackburn in Burnand v. Rodocanachi, L. R. 7 App. Cas. 333, 342, plainly disapproved the decision, and although Scrutton, J. felt bound to follow it in Thames & Mersey Maine Ins. Co. v. British & Chilean S. S. Co., (1915) L. R. 2 K. B. 214, he too appears to have had doubts as to its correctness (p. 221). On the other hand, Brown, J. in The St. Johns, supra (D.C.) 101 F. 469, not only followed it, though in a case where the underwriter made no actual profit, but was merely preferred to the owner, but justified it for the reasons we have already stated. In The Livingstone, supra, 130 F. 746, we were pre-
[fol. 166] sented with a claim for the whole recovery against a tort-feasor. It was a legitimate corollary upon North of England Association v. Armstrong, supra (L. R. 5 Q. B. 244), inescapable if the ratio decidendi of that decision was recognized at all, for the mid ground which the plaintiffs suggest —that the underwriter should be merely preferred to the owner—has no warrant in law. Unless his right of subrogation gives him the recovery in toto, he must let in the owner as coinsurer, as in other similar situations. We refused to recognize the reasoning of that decision; we refused to let the underwriter profit out of the venture. We said nothing more; we did not put him in a preferred position for it was not necessary; the language relied upon to that effect on page 751 of 130 F., was certainly not uttered with any such intent. Nevertheless, although the point was not discussed and probably was not considered originally, it is true that

the mandate was so drawn as to repay to the underwriters their full payments without deducting anything for expenses. Moreover, when this was called to our attention upon petition of rehearing, we refused to amend the mandate. For this reason the plaintiffs say that we accepted the general principle of North of England Association v. Armstrong, supra (L. R. 5 Q. B. 244), and that we only limited it by denying any profit to the underwriter. We are unwilling to accept a decision upon a point not discussed in the opinion and of relatively small consequence anyway, as having the full force of a precedent, especially when to do so is to compromise the only theory on which the decision in chief could rest. It is scarcely necessary more than to allude to the kind of approval supposed to have been given to North of England Association v. Armstrong, supra (L. R. 5 Q. B. 244) in the Potomac, 105 U. S. 630, 635, 26 L. Ed. 1194.

There remains, however, the question whether, regardless of how we should decide the point were it before us for the first time, we should assume that the rule was written into the policies sub silentio as part of the settled law. Whatever be the case in England, there is no ground for supposing it settled here. The St. Johns, supra (D. C.) 101 F. 469, was indeed cited in The Livingstone, supra (C. C. A.) 130 F. 746, though it is not clear for what purpose; but its reasoning was necessarily overruled, and although unquestionably it has the great authority of the judge who decided it, we cannot regard it as unimpaired. We do not forget that we are not to depart from English maritime law, when we can help it (The Eliza Lines, 199 U. S. 119, 128, 26 S. Ct. 8, 50 L. Ed. 115, 4 Ann. Cas. 406; Queen Ins. Co. v. Globe & R. F. Ins. Co., 263 U. S. 487, 493, 44 S. Ct. 175, 68 L. Ed. 402), but North of England Association v. Armstrong, supra (L. R. 5 Q. B. 244), has never been passed on by an appellate court, was questioned by a great judge, and followed by another with doubt and because he was bound by its authority. All this does not in our opinion make up such a uniform body of authority that we must assume the doctrine as an implied term in American hull policies. Besides, although we are not advised of the circumstances in which the "recovery statement" was made, we do know that it was prepared by persons especially versed in such questions, and they at any rate followed the orthodox rule.

No question has been raised in the briefs as to the correctness of the "statement," in case the defendant is to be regarded as coinsurer to the extent of the actual value, as opposed to the agreed. Moreover, the plaintiffs' assignments of errors claim specifically only that they should have had all the recovery, or at least interest upon their payments; otherwise they only assign generally that the decision was wrong. Therefore, no other questions can be raised; and indeed, as we have just said, we do not understand that any others are intended to be raised.

Judgment affirmed in the plaintiffs' appeals and reversed on the defendant's appeal; complaints dismissed.

[fol. 167] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 15th day of November, one thousand nine hundred and thirty-seven.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

ÆTNA INSURANCE COMPANY, Plaintiff-Appellant,

vs.

UNITED FRUIT COMPANY, Defendant-Appellant

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed on the plaintiff's appeal and reversed on the defendant's appeal, with costs to the defendant, and cause remanded with instructions to dismiss the complaint.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 168] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Ætna Insurance Company vs. United Fruit Company. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 15, 1937. William Parkin, Clerk.

[fol. 169] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 15th day of November, one thousand nine hundred and thirty-seven.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

UNION MARINE & GENERAL INSURANCE CO., LTD., Plaintiff-Appellant,

vs.

UNITED FRUIT COMPANY, Defendant-Appellant

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed on the plaintiff's appeal and reversed on the defendant's appeal, with costs to the defendants, and cause remanded with instructions to dismiss the complaint.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 170] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Union Marine & General Insurance Co., Ltd., vs. United Fruit Company. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 15, 1937. William Parkin, Clerk.

[fol. 171] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 15th day of November, one thousand nine hundred and thirty-seven.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

BOSTON INSURANCE COMPANY, Plaintiff-Appellant,

vs.

UNITED FRUIT COMPANY, Defendant-Appellant

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed on the plaintiff's appeal and reversed on the defendant's appeal, with costs to the defendant, and cause remanded with instructions to dismiss the complaint.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 172] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Boston Insurance Company vs. United Fruit Company. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 15, 1937. William Parkin, Clerk.

[fol. 173] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 172, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Ætna Insurance Company, Plaintiff-Appellant, against United Fruit Company, Defendant-Appellant (and two other cases), as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this thirteenth day of January, in the year of our Lord one thousand nine hundred and thirty-eight, and of the Independence of the said United States the one hundred and sixty-second.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 174] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 773

ORDER ALLOWING CERTIORARI—Filed March 14, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 175] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 774

ORDER ALLOWING CERTIORARI—Filed March 14, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 176] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 775

ORDER ALLOWING CERTIORARI—Filed March 14, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File Nos. 42,254, 42,255, 42,256. U. S. Circuit Court of Appeals, Second Circuit. Term No. 773. Ætna Insurance Company, Petitioner, vs. United Fruit Company. Term No. 774. Union Marine & General Insurance Company, Ltd., formerly Union Marine Insurance Company, Ltd., petitioner, vs. United Fruit Company. Term No. 775. Boston Insurance Company, petitioner, vs. United Fruit Company. Petition for writs of certiorari and exhibit thereto. Filed February 8, 1938. Term Nos. 773, O. T., 1937, 774, O. T., 1937, 775, O. T., 1937.